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No. 84-262

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In The  
**Supreme Court of the United States**  
October Term, 1984

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MOUNTAIN STATES TELEPHONE AND  
TELEGRAPH COMPANY,

*Petitioner,*

vs.

PUEBLO OF SANTA ANA,

*Respondent.*

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**ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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**JOINT APPENDIX**

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PETITION FOR CERTIORARI FILED AUGUST 13, 1984  
CERTIORARI GRANTED OCTOBER 9, 1984

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## RELEVANT DOCKET ENTRIES

*United States District Court for the District of New Mexico*

Date	Action Taken
10-10-80	Complaint Filed
12-15-80	Answer Filed
03-09-81	Motion to File Amended Complaint
03-10-81	Motion to File Amended Complaint Granted and Amended Complaint Docketed; Order That Original Answer Shall be Considered as Answer to the Amended Complaint
03-30-81	Motion by Pueblo of Santa Ana to Strike Mountain Bell's Affirmative Defenses
04-15-81	Pueblo's Motion to Strike Mountain Bell's Affirmative Defenses Denied
07-23-81	Amended Order of 04-15-81 to Strike Mountain Bell's Affirmative Defenses Nos. 1, 2, and 3
12-30-81	Motion by Mountain Bell for Partial Summary Judgment Filed With Supporting Memorandum
02-01-82	Motion by Pueblo of Santa Ana to File a Response in Excess of Twenty Pages With Supporting Response Attached; Response Docketed 03-29-82
03-29-82	
03-19-82	Mountain Bell Reply Memorandum Filed
06-03-82	District Court Memorandum Opinion and Order Entered on the Docket
07-07-82	Motion by Mountain Bell to Certify Case for Interlocutory Appeal With Supporting Memorandum Filed
07-14-82	District Court Order Granting Mountain Bell's Motion for an Interlocutory Appeal Entered on the Docket

*United States Court of Appeals for the Tenth Circuit*

07-22-81 Mountain Bell Petition for Permission to Appeal

01-28-83 Order for Permission to Appeal Granted to Mountain Bell

04-25-83 Motion of Atchison, Topeka & Santa Fe Railway for Leave to File Amicus Brief

05-12-83 Order Permitting Atchison, Topeka & Santa Fe Railway to File Amicus Curiae Brief

05-25-83 Motion of Pueblo de Acoma for Leave to File Brief as an Amicus Curiae

06-07-83 Motion of Public Service Company of New Mexico for Leave to Join Amicus Curiae Brief of Atchison, Topeka & Santa Fe

06-15-83 Motion of Pueblo de Acoma to File Amicus Brief Granted

07-08-83 Motion of Atchison, Topeka & Santa Fe Railway for Leave to File Supplemental Brief as an Amicus Curiae

07-15-83 Motion of Public Service Company of New Mexico for Leave to Join Amicus Curiae Brief of Atchison, Topeka and Santa Fe Railway Company Granted

07-18-83 Motion of Atchison, Topeka & Santa Fe Railway for Leave to File Supplemental Brief as an Amicus Curiae Granted

01-31-84 Oral Argument Held in the Tenth Circuit

05-14-84 Tenth Circuit Memorandum Opinion and Order Issued; Judgment Entered on the Same Day

06-14-84 Order Staying the Mandate in the Tenth Circuit Until 7-14-84

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

—o—

No. CIV 80 841 M

—o—

PUEBLO OF SANTA ANA,  
Plaintiff,

v.

MOUNTAIN STATES TELEPHONE AND  
TELEGRAPH COMPANY,  
Defendant.

—o—

AMENDED COMPLAINT  
(Filed March 10, 1981)  
FIRST CLAIM

1. This Court has jurisdiction of this action pursuant to 28 U.S.C., Section 1362.

2. Plaintiff is an Indian tribe, recognized as such by the United States government.

3. Defendant, Mountain States Telephone and Telegraph Company (or Mountain Bell, as defendant company is more commonly known and will be referred to hereafter), is a corporation organized and existing under the laws of the State of Colorado and authorized to do business in New Mexico. Defendant is engaged primarily in the electronic transmission of telecommunications.

4. Plaintiff is the beneficial owner of a tract of land situated in Sandoval County, New Mexico, known as El Ranchito, which land is held in trust for plaintiff by the

United States of America. Without waiving or in any manner limiting any assertion of title to the area of overlap between El Ranchito and the San Felipe Grant, and for purposes of this action only, plaintiff makes no claim herein with respect to any portion of defendant's line that lies north of the southern boundary of the San Felipe Pueblo Grant. Henceforth as used in this action, all references to "El Ranchito", "plaintiff's land", etc. shall be construed to include only that portion of El Ranchito that lies south of the southern boundary of the San Felipe Pueblo Grant.

5. The Act of June 30, 1834 (4 Stat. 730), codified at 25 U.S.C., Section 177, otherwise known as the Indian Non-Intercourse Act, was made applicable to Santa Ana lands by the Act of February 27, 1851 (9 Stat. 587).

6. Mountain States Telephone and Telegraph Company was formed in 1911 by the merger of three firms, Colorado Telephone Company, Rocky Mountain Bell Telephone Company, and Tri-State Telephone and Telegraph Company. As such, Mountain States Telephone and Telegraph Company is the successor-in-interest of the three named companies.

7. In 1904 or 1905 Colorado Telephone Company, a predecessor company of Mountain Bell, began construction of a long distance telephone trunkline from Raton to Socorro, New Mexico as part of a proposed Denver to El Paso line.

8. In 1905 the Raton-Socorro segment of the Denver-El Paso trunkline was constructed upon and across the eastern portion of El Ranchito.

9. At no time prior to construction of the line across El Ranchito did the governing body of the Pueblo of Santa Ana grant permission to any predecessor of Mountain Bell to enter upon Santa Ana lands for purposes related to construction of the Denver-El Paso line.

10. From 1905 to the present, defendant and its predecessors-in-interest have continuously utilized the Denver-El Paso line and in doing so have occupied and utilized plaintiff's land for its own commercial purposes, without a valid right-of-way or other lawful authorization or consent thereto, which use and occupancy constitute trespass on plaintiff's land.

11. Defendant is now and has continuously since 1905, as a result of its unauthorized use of plaintiff's land, been unjustly enriched at plaintiff's expense.

12. Plaintiff is entitled to an accounting from defendant of the net rents, issues, and profits that have accrued to defendant by virtue of its wrongful use and occupancy of plaintiff's land for transmission of telecommunications, and for judgment against defendant in the amount so determined, plus interest from the date such payments were due, and all costs associated with this action.

13. Plaintiff is further entitled to an injunction against further unauthorized use of plaintiff's land by defendant, unless accounting for rents and profits is made to plaintiff on a regular basis.

14. These trespasses were willful and wanton and in gross disregard of plaintiff's rights, and defendant is therefore liable to plaintiff for exemplary damages.



## SECOND CLAIM

15. Plaintiff here realleges paragraphs 1 through 10 above, the same as though they were fully set out herein.

16. On numerous occasions during the period of defendant's unlawful use and occupancy of the land in question, agents or employees of the defendant have come upon the land, at the direction of defendant, for purposes solely related to defendant's business, without obtaining any consent or authorization therefor from the plaintiff.

17. Each such unauthorized entry by defendant's agents or employees constitutes a trespass, for which defendant is liable to plaintiff for damages in the amount of \$100.

18. These trespasses were willful and wanton and in gross disregard of plaintiff's rights, and defendant is therefore liable to plaintiff for exemplary damages.

19. Plaintiff is further entitled to an injunction against further unauthorized entries onto El Ranchito by defendant for any purpose relating to the Denver-El Paso Toll line.

WHEREFORE, plaintiff requests that this court order defendant to account to plaintiff for the net rents, issues and profits which have accrued to defendant from the transmission of telecommunications over and across plaintiff's lands since the date of construction of the subject telephone trunkline, and to enter judgment against defendant in the amount so determined, plus interest at six percent per annum from the date such sums accrued; and to enjoin the defendant from further wrongful use of plaintiff's land without rendering similar accountings

on a regular basis; and to enter judgment against defendant in the amount of \$100 for each unlawful entry onto plaintiff's land and to enjoin defendant further from such entries; and to enter judgment in the amount of \$500,000 in exemplary damages, plus costs and interest and for such other and further relief as seems just in the premises.

Respectfully submitted,

LUEBBEN, HUGHES & KELLY  
805 Tijeras, NW  
Albuquerque, NM 87102  
(505) 842-6123

By /s/ JOHN J. KELLY  
Attorneys for Plaintiff

(Certificate of Mailing Omitted in Printing.)

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IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEW MEXICO

(Title omitted in printing)

ANSWER

(Filed Dec. 19, 1980)

The Mountain States Telephone and Telegraph Company (hereinafter called "Mountain Bell"), answers and pleads to the Plaintiff's Complaint as hereinafter set forth.

1. The allegations of paragraph 1 of the Complaint are admitted.

2. In answer to the allegations of paragraph 2 of the Complaint, Mountain Bell states that it is without knowledge or information sufficient to form a belief as to the truth of the averments and, therefore, denies the allegations.



3. The allegations of paragraph 3 of the Complaint are admitted.

4. The allegations of paragraph 4 of the Complaint are denied.

5. In answer to the allegations of paragraph 5 of the Complaint, Mountain Bell states that the statutes referred to speak for themselves.

6. In answer to the allegations of paragraph 6 of the Complaint, Mountain Bell admits that it was formed in 1911 by the merger of Colorado Telephone Company and Tri-State Telephone and Telegraph Company, which then purchased property of Rocky Mountain Bell Telephone Company. All other allegations of paragraph 6 of the Complaint not specifically admitted are denied.

7. In answer to paragraph 7 of the Complaint, Mountain Bell admits that in 1904 or 1905, the Colorado Telephone Company began construction, continued construction or engaged in reconstruction of a telephone toll line or toll lines at various points between Denver and Raton, New Mexico; and between Las Vegas and Socorro, New Mexico. This later became known as the Denver-El Paso Toll Line. All other allegations of paragraph 7 of the Complaint not specifically admitted are denied.

8. In answer to paragraph 8 of the Complaint, Mountain Bell admits that in 1904 or 1905, the Colorado Telephone Company acquired rights-of-way upon and across the El Ranchito Grant, but states that it is without knowledge or information sufficient to form a belief as to the truth of all other allegations of paragraph 8 of the Complaint and, therefore, denies all other allegations.

9. In answer to the allegations of paragraph 9 of the Complaint, Mountain Bell states that it is without knowledge or information sufficient to form a belief as to the truth of the averments and, therefore, denies the allegations.

10. The allegations of paragraphs 10, 11, 12, 13 and 14 are denied.

11. Paragraph 15 of the Complaint realleges the allegations of paragraphs 1 through 10 of the Complaint. In answer thereto, Mountain Bell here reiterates its answers to paragraphs 1 through 10 of the Complaint.

12. The allegations of paragraphs 16, 17, 18 and 19 of the Complaint are denied.

13. All allegations of the Complaint not specifically admitted are denied.

#### FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

#### SECOND AFFIRMATIVE DEFENSE

The Plaintiff may not have standing or capacity to bring this suit or to assert the claims alleged.

#### THIRD AFFIRMATIVE DEFENSE

The Plaintiff has failed to join the United States of America and the Secretary of the Interior, who are necessary and indispensable parties to this action for a just adjudication of all of the issues and of the rights of the Defendant and without whom complete relief cannot be

accorded to those already a party. In the absence of the United States of America and the Secretary of the Interior being a party, the Plaintiff's claim and this action should be dismissed.

#### FOURTH AFFIRMATIVE DEFENSE

Portions of the property which is the subject of the Complaint may not be or may not have been owned by the Plaintiff during all or part of the period covered by the Complaint. As to those portions of the property and as to those periods of time, the Plaintiff may not be the real party in interest, may not have standing or may have failed to join indispensable parties plaintiff.

#### FIFTH AFFIRMATIVE DEFENSE

In 1927, the United States of America, as Guardian of the Pueblo of Santa Ana in the State of New Mexico, brought an action against Mountain Bell and other defendants with respect to the same property that is the subject of this current suit. That action was Case No. 1814 in Equity in the United States District Court for the District of New Mexico. In that suit, the Plaintiff claimed title to the property, alleged that Mountain Bell had no title or interest in the property and asserted that Mountain Bell had trespassed on the property. The Plaintiff prayed that title be affirmed and quieted in the Plaintiff and that the Plaintiff be awarded such other relief as was proper. Upon motion of the Plaintiff, Mountain Bell was dismissed from the suit on May 31, 1928, the Court finding in its Order of Dismissal that Mountain Bell had, since the institution of the suit, "... secured good and sufficient title to the right-of-way and premises

...". A copy of the Summons and Complaint are attached as Exhibit "A". A copy of the Motion to Dismiss Mountain Bell is attached as Exhibit "B". A copy of the Order dismissing Mountain Bell is attached as Exhibit "C".

#### SIXTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred by collateral estoppel or res judicata.

#### SEVENTH AFFIRMATIVE DEFENSE

On February 23, 1928, the Plaintiff agreed and granted to the Defendant an easement across the Plaintiff's property" . . . to construct, maintain and operate a telephone and telegraph pole line, including the necessary poles, cables, conduits, wires and fixtures, with the right to permit the attachment of the wires of any other party, and the right to trim any trees along said line so as to keep the wires cleared at least forty-eight (48) inches, and to set the necessary guy and brace poles and anchors, and to attach thereto the necessary guy wires, . . ." That agreement and grant was duly approved by the Department of the Interior on April 13, 1928. A copy of the agreement and grant is attached hereto as Exhibit "D".

#### EIGHTH AFFIRMATIVE DEFENSE

The Plaintiff has long known, or is charged with knowledge, of the existence, construction, maintenance and use of the subject telephone line. Moreover, the Plaintiff has benefitted or may have benefitted from the existence of and the service provided by the telephone line. By reason thereof, the Plaintiff's allegations and assertions in 1980 of claims for trespass damages since 1905 are barred.

### NINTH AFFIRMATIVE DEFENSE

The Defendant Mountain Bell, and its predecessors, acted innocently, in good faith and under color of title in constructing, maintaining and operating the telephone line in the belief that it had the right to do so and without any knowledge of any claims by the Plaintiff.

### TENTH AFFIRMATIVE DEFENSE

The Defendant and its predecessors have openly, notoriously, adversely and continuously constructed, maintained and operated the subject telephone line across Plaintiff's claimed property under color of title for three-quarters of a century and have thereby acquired the right, title and interest to have, construct, maintain and operate the telephone line. As a result, the Plaintiff has no right or claims for trespass or damages.

### ELEVENTH AFFIRMATIVE DEFENSE

The Plaintiff is estopped from asserting and recovering upon the claims alleged in the Complaint.

### TWELFTH AFFIRMATIVE DEFENSE

The Plaintiff has waived its claims.

### THIRTEENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred upon the grounds of laches.

### FOURTEENTH AFFIRMATIVE DEFENSE

The Plaintiff has released its claims for trespass and damages.

### FIFTEENTH AFFIRMATIVE DEFENSE

The Plaintiff has licensed the Defendant to construct, operate and maintain its toll line across the Plaintiff's property, and the Plaintiff's claims for trespass and damages are barred.

### SIXTEENTH AFFIRMATIVE DEFENSE

The Plaintiff has given or granted to the Defendant actual or implied consent and authorization to construct, operate and maintain the telephone line across the Plaintiff's property, and the Plaintiff's claims for trespass and damages are barred.

### SEVENTEENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred by the applicable statutes of limitations.

### EIGHTEENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims have been settled and compromised.

### NINETEENTH AFFIRMATIVE DEFENSE

In the event the Court determines that Mountain Bell, or its predecessors, did in fact trespass upon Plaintiff's property, Mountain Bell or its predecessors thereby acquired the right, title and interests to the property and to construct, operate and maintain the telephone line across the property by inverse condemnation.

### TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff's prayer for injunctive relief and future damages should be denied on the ground of mootness since



WHEREFORE, the Defendant prays that the Plaintiff's claims be denied, that the action be dismissed with prejudice against the Plaintiff, and that the Defendant be awarded its costs, including reasonable attorneys' fees.

**UNITED STATES OF AMERICA            )**  
**DISTRICT OF NEW MEXICO         ) SS:**

THE PRESIDENT OF THE UNITED STATES OF  
AMERICA

Court of and (Illegible) for the District of New Mexico, in the City of (Illegible), the (Illegible) (Illegible) on or before the twentieth day after service, excluding the day thereof, to answer a bill of complaint of The United States of America, as Guardian of the Pueblo of Santa Ana, in the State of New Mexico this day filed in the office of the clerk of said court, in said city of Santa Fe, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default and a decree had and entered accordingly.

To the MARSHAL OF THE DISTRICT OF NEW MEXICO, to execute and make due return within twenty days from the date hereof.



By .....  
Deputy Clerk.

The above-named defendants are hereby notified that unless they and each of them shall file an answer or other defense in the office of the clerk of said court, at the city of Santa Fe aforesaid, on or before the twentieth day after service, excluding the day thereof the bill of complaint may be taken pro confesso.

By \_\_\_\_\_  
Deputy Clerk

IN THE DISTRICT COURT  
No. 1814 IN EQUITY

THE UNITED STATES OF  
AMERICA, as Guardian of  
the PUEBLO OF SANTA

v.

CHARLES F. BROWN, SOSTENES JARAMILLO, THE MOST REVEREND A. T. DAEGER as Archbishop of Santa Fe, and as Representing the Roman Catholic Church in New Mexico; VIRGINIA PEREA YRISARRI; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation; THE WESTERN UNION TELEGRAPH COMPANY, a Corporation; THE POSTAL TELEGRAPH-CABLE COMPANY OF NEW MEXICO, a Corporation; THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, a Corporation; MAURICO MONTOYA, FRANCISQUITA VALDEZ, MRS. JULIANITA VALDEZ, MRS. EMILIA VALDEZ, MANUEL GUTIERREZ, MIGUEL MONTOYA, ONESIMO VALDEZ, MRS. PORFILLIA ARCHEBUEQUE, JESUS TEOFILO VALDEZ, FRANCISCO GRIEGO, DIEGO GUTIERREZ, MRS. JUANA GALLEGOS, MRS. GENOVEVA GRIEGO, JUAN N. GRIEGO and REMEDIOS BACA.

**Defendants,**

COMES NOW The United States of America, as guardian of the Pueblo of Santa Ana, in the State of New Mexico, and brings this its Bill of Complaint against Charles F. Brown, Sostenes Jaramillo, The Most Reverend A. T. Daeger, as Archbishop of Santa Fe, and as representing the Roman Catholic Church in New Mexico; Virginia Perea, Carlota P. Otero, Barbara Perea Yrisarri, The Atchison, Topeka and Santa Fe Railway Company, a corporation, The Western Union Telegraph Company, a corporation, The Postal Telegraph-Cable Company of New Mexico, a corporation, The Mountain States Telephone and Telegraph Company, a corporation, Maurico Montoya, Francisquita Valdez, Mrs. Julianita Valdez, Mrs. Emilia Valdez, Manuel Gutierrez, Miguel Montoya, Onesimo Valdez, Mrs. Porfilia Archebueque, Jesus Teofilo Valdez, Francisco Griego; Diego Gutierrez, Mrs. Juana Gallegos, Mrs. Genoveva Griego, Juan N. Griego, and Remedios Baca and thereupon plaintiff avers:

1. That this action is brought by the direction and under the authority of the Attorney General of the United States, and in pursuance of the requirements of the Act of Congress of June 7, 1924, entitled "An Act to Quiet Title to Lands Within Pueblo Indian Land Grants, and for other purposes."

2. That said defendants, as plaintiff is informed and believes, are citizens of the United States and of the State of New Mexico, and residents of Sandoval County in said State, except that the Most Reverend A. T. Daeger is a resident of Santa Fe County, in said State; that the Atchison, Topeka and Santa Fe Railway Company is a corporation of the State of Kansas and a citizen and inhabitant of that State; that the Western Union Telegraph Company is

a corporation of the State of New York, and a citizen and inhabitant of that State; that the Postal Telegraph-Cable Company of New Mexico is a corporation of the State of New Mexico, and a citizen and inhabitant of that State; and that The Mountain States Telephone and Telegraph Company is a corporation of the State of Colorado, and a citizen and inhabitant of that State; but that all of the aforesaid corporations are doing business in said Sandoval County and elsewhere in the State of New Mexico.

3. That the grounds upon which the Court's jurisdiction depends are, that the United States is plaintiff herein, and that this suit is authorized and directed in and by said Act of June 7, 1924.

4. That the Pueblo of Santa Ana is a community of Pueblo Indians in said Sandoval County, New Mexico; that the Indians inhabiting and comprising said Pueblo at all times mentioned herein have been and now are tribal Indians, and at all times since the treaty of Guadalupe Hidalgo have been and now are wards of this plaintiff, *non sui juris*, and incompetent to manage their own affairs; that this suit is brought by plaintiff on behalf of said Pueblo and the Indians thereof in its capacity as guardian of said Indians and their lands and possessions.

5. That more than two centuries ago the King of Spain, through his authorized representative, granted to said Pueblo of Santa Ana a tract of land situated in what is now Sandoval County in the State of New Mexico; that said grant was thereafter, and on, to-wit, the 22nd day of December, 1858, confirmed by Act of Congress; that thereafter, and on, to-wit, November 1, 1864, in pursuance of the last mentioned Act, a patent describing and delimit-

ing the lands of said grant and conveying the same to the said Pueblo in communal fee simple title, was made, executed and delivered by the United States to said Pueblo; that thereafter, and between February 18 and March 29, 1915, the exterior boundaries of said grant, as described in said patent, were retraced and resurveyed under the direction of Francis E. Joy, United States Surveyor, and that said exterior boundaries as set forth in said survey are as follows, to-wit:

#### SANTA ANA PUEBLO GRANT

##### *North Boundary.*

Beginning at a 3" iron post marked and described by the Surveyor General as the N. E. Corner of the Santa Ana Pueblo Grant, from which the south center quarter corner of Section 1, and the north center quarter of Section 12, T. 13 and 14 N., R. 3 E., N. M. P. M., bears south 17° E. 8.76 chains; thence S. 89° 13' W. 158.40 chains to an iron post marked 2 M. Cor.; thence N. 89° 54' W., 79.90 chains to an iron post marked 3 M. Cor.; thence N. 89° 37' iron post marked 4 M. Cor.; thence N. 0° 15' W. 96.48 N. 89° 49' W. 95.77 chains to a 3" iron post, which is the N. W. Cor. of the Santa Ana Pueblo Grant.

##### *West Boundary.*

Thence S. 0° 7' E. 415.31 chains to a 3" iron post, which is the S. W. Cor. of the Santa Ana Pueblo Grant.

##### *South Boundary.*

Thence N. 89° 43' E. 418.99 chains to a 3" iron post, which is the S. E. Cor. of the Santa Ana Pueblo Grant.

##### *East Boundary.*

Thence N. 0° 8' W. 80.45 chains to an iron post marked 1 M. Cor.; thence N. 2° 20' W. 160.76 chains to an iron post marked 3 M. Cor.; thence N. 0° 8' E. 80.22 chains to an iron post marked 4 M. Cor.; thence N. 0° 15' W. 96.48 chains to a 3" iron post, which is the N. E. Cor. of the Santa Ana Pueblo Grant and place of beginning, containing approximately 15,109.84 acres.

That the field notes of said survey are on file in the General Land Office, Washington, D. C.; the office of the Cadastral Engineer, Santa Fe, New Mexico, and the office of the Pueblo Lands Board, Santa Fe, New Mexico.

6. That ever since the eighteenth century, said Pueblo of Santa Ana has been and now is the owner in fee simple of another land in Sandoval County, New Mexico, commonly known as El Ranchito Purchase, the exterior boundaries whereof are as follows, to-wit:

Beginning at a 3" iron post marked and described by the Surveyor General as the N. E. corner of El Ranchito Grant, from which the intersection of south line between sections 12 and 13, Township 13 North, Range 4 East, N. Mex. P. M., bears S 27° 17' W. 23.08 chains, which is an iron post 1 inch in diameter with brass cap stamped:

U. S. GENERAL LAND OFFICE SURVEY

PENALTY \$250 FOR REMOVAL

T. 13 N.

S. 12 P.

—  
S. 13 1



## R. 4 E.

1916.

Thence S. 27° 17' W. along east boundary of grant 64.10 chains to A. P. or corner No. 1, east boundary; thence S. 62° 22' W., 15.84 chains to an iron post marked 1 mile corner; thence S. 62° 29' W. 2.22 chains to an iron post marked A. P. No. 2; thence S. 43° 37' W. 17.54 chains to an iron post marked A. P. No. 3; thence S. 59° 17' W. 11.11 chains to an iron post marked A. P. No. 4; thence S. 82° 38' W. 22.09 chains to an iron post marked A. P. No. 5; thence S. 42° 22' W., 14.16 chains to an iron post marked A. P. No. 6; thence S. 29° 09' W., 13.07 chains to an iron post marked 2 mile corner and A. P. No. 7; thence S. 43° 43' W., 14.80 chains to an iron post marked A. P. No. 8; thence S. 19° 09' W., 28.45 chains to an iron post marked A. P. No. 9; thence S. 32° 42' W., 35.04 chains to an iron post marked A. P. No. 10; thence S. 89° 54' W., 75.34 chains to a 3" iron post marked and described by the Surveyor General as the N. W. corner of the Felipe Gutierrez Grant and A. P. No. 11, El Ranchito Grant; thence S. 11° 48' E. 39.09 chains to an iron post marked A. P. No. 12; thence S. 40° 55' W., 9.86 chains to A. P. 13; thence S. 46° 10' W., 5.22 chains to A. P. No. 14; thence S. 31° 09' W., 9.48 chains to the S. E. corner of the El Ranchito Grant; thence S. 89° 51' W., along the S. boundary of the El Ranchito Grant and the N. boundary of the Felipe Gutierrez Grant 29.92 chains; thence N. 89° 59' W., continuing measuring 78.77 chains to the S. W. corner of El Ranchito Grant; thence N. 16° 39' E., from the S. W. corner of the El Ranchito Grant, along the W. boundary, 36.18 chains to an iron post marked A. P. No. 1; thence N. 8° 46' E., 39.44 chains to A. P. No. 2; thence N. 23° 40' E., 4.78 chains to an iron

post marked 1 mile corner W. boundary; thence N. 22° 43' E., 7.99 chains to an iron post marked A. P. No. 3; thence N. 23° 15' E., 72.41 chains to an iron post marked 2 mile corner; thence N. 19° 35' E., 2.06 chains to an iron post marked A. P. No. 4; thence N. 47° 41' E., 24.89 chains to an iron post marked A. P. No. 5; thence S. 87° 12' E., 15.38 chains to an iron post marked A. P. No. 6; thence N. 52° 13' E. 8.64 chains to an iron post marked A. P. No. 7; thence N. 15° E. 29.26 chains to an iron post marked 3 mile corner and A. P. No. 8; thence N. 28° 29' E., 51.02 chains to a 3" iron post marked and described by the Surveyor General as the N. W. corner of El Ranchito Grant and the S. W. corner of Angostura Grant; thence S. 87° E., along the north boundary of the El Ranchito Grant 96.72 chains, point for 1 mile corner at 79.92 chains, center of Rio Grande River; thence S. 81° 92' E., 19.27 chains to an iron post marked A. P. No. 2, Angostura Grant, and A. P. No. 2, El Ranchito Grant; thence S. 85° 35' E., 3.34 chains to an iron post marked A. P. No. 3; thence S. 78° 45' E., 6.77 chains to an iron post marked A. P. No. 4; thence S. 70° 15' E. 4.16 chains to an iron post marked A. P. No. 5; thence S. 74° 15' E., 18.93 chains, to an iron post marked A. P. No. 6; thence N. 89° 25' E., 11.22 chains to an iron post marked 2 mile corner; thence N. 89° 25' E., 41.19 chains to an iron post marked 2½ mile corner; thence S. 89° E. 40.02 chains to an iron post marked 3 mile corner; thence N. 89° 34' E., 13.40 chains to a 3" iron post hereinbefore described as the N. E. corner of the El Ranchito Grant and place of beginning, containing 4,945.24 acres; which said tract was confirmed to said Pueblo by decree of the Court of Private Land Claims dated March 31, 1897, and patented to said Pueblo by the United States on, to-wit,



October 18, 1909; that for more than 150 years said Pueblo of Santa Ana has been and now is the owner in fee simple of said El Ranchito Purchase and all thereof, with title and color of title, and throughout said period has been and now is in open, notorious, actual, exclusive, continuous and adverse possession of the same, and exempted and entitled to be exempted from the payment of any taxes thereon; except that the Pueblo Lands Board created by said Act of Congress of June 7, 1924, has determined that the Indian title to certain portions of said purchase has been extinguished, and that title to said portions now vests in various owners other than said Pueblo, which said portions or parcels so excepted are set forth and described by metes and bounds as Exceptions Nos. 1 to 21, on pp. 17 to 31 in the report of said Board, entitled "Pueblo Lands Board, Santa Ana Pueblo, Report on Title to Lands Granted or Confirmed to Pueblo Indians not Extinguished," filed in the office of the Clerk of this Court at Santa Fe, New Mexico, on or about July 19, 1927; that said Exceptions 1 to 21, are not involved in this suit and no relief is here asked with reference to the land included therein.

7. That ever since the eighteenth century, said Pueblo of Santa Ana has been and now is the owner in fee simple of another tract or parcel of land in Sandoval County, New Mexico, containing 29.69 acres, adjacent to said El Ranchito Purchase, but within the exterior boundaries of what is known as the Felipe Gutierrez or Bernalillo Grant; that the exterior boundaries of said 29.69 acre tract are as follows to-wit:

Beginning at a point on the south boundary of El Ranchito Grant, from which the closing corners at the in-

tersection of the south boundary of the El Ranchito Grant between Sections 20 and 21, Twp. 13 N., Rge. 4 E., N. M., P. M., bears South  $89^{\circ} 58'$  west, 10.62 chains; thence South  $33^{\circ} 02'$  West 17.85 chains; thence North  $62^{\circ} 30'$  West 33.54 chains; thence South  $89^{\circ} 58'$  east along the south boundary of El Ranchito Grant 39.72 chains to the place of beginning, containing 29.69 acres.

That for more than 150 years said Pueblo of Santa Ana has been and now is the owner in fee simple of said 29.69 acre tract and all thereof with title and color of title, and throughout said period has been and now is in open, notorious, actual, exclusive, continuous and adverse possession of the same, and exempted and entitled to be exempted from the payment of any taxes thereon.

8. And plaintiff further avers that certain of the defendants herein named claim some right or rights, title or titles, interest or interests, the exact nature, character or pretended basis whereof is unknown to plaintiff, adverse to said Pueblo and the Indians thereof, and constituting a cloud upon the title of said Pueblo and said Indians in and to portions of said El Ranchito Purchase; that the descriptions of said portions of said purchase to which the claims of said defendants attach and the names of the defendants claiming each of said portions, so far as is known to plaintiff, are specifically as follows, to-wit:

"X"

PRIVATE CLAIM NO. 18, PARCEL NUMBER 1  
CHARLES F. BROWN.

Beginning at Cor. No. 1 of this claim (which is also Cor. No. 3 of P. C. 17, P. 1); thence N.  $89^{\circ} 59'$  W., 3.42 chains to an iron post marked Cor. No. 2 of this claim on

the boundary of the El Ranchito Grant; thence N. 69° 11' W., along boundary of this claim 26.35 chains to an iron post marked Cor. No. 3; thence N. 4° 47' W., along boundary of this claim 1.40 chains to Cor. No. 4; thence S. 69° 02' E., along boundary common to P. C. 17 P. 1, 30.18 chains to Cor. No. 1 of this claim and place of beginning; containing 3.511 acres.

"Y"

PRIVATE CLAIM NO. 20, PARCEL NUMBER 1.  
SOSTENES OR SOSTEN JARAMILLO.

Beginning at an iron post at the S. W. corner of this claim for Cor. No. 1 (from which the S. center  $\frac{1}{4}$  sec. cor. bet. secs. 20 and 29 bears S. 19° 45' W., 11.66 chains dist.); thence S. 61° 39' E. along boundary of this claim 2.56 chains to an iron post, Cor. No. 2; thence S. 73° 36' E. along boundary of this claim 6.26 chains to an iron post Cor. No. 3; thence S. 68° 03' E. along boundary of this claim 3.90 chains to an iron post Cor. No. 4; thence N. 21° 15' E. along boundary of this claim 3.90 chains to an iron post, Cor. No. 5; thence N. 67° 00' W., along boundary of this claim 3.04 chains to an iron post, Cor. No. 6; thence N. 14° 00' E. along boundary of this claim .37 chains to an iron post, Cor. No. 7; thence N. 67° 07' W., along boundary of this claim 2.64 chains to an iron post, Cor. No. 8; thence N. 69° 30' W., along boundary of this claim 4.35 chains to an iron post, Cor. No. 9; thence N. 30° 00' E., along boundary of this claim 3.55 chains to an iron post, Cor. No. 10; thence N. 68° 42' W., along boundary of this claim 2.39 chains to an iron post, Cor. No. 11; thence S. 26° 35' W., along boundary of this claim 8.07 chains to Cor. No. 1 and place of beginning, containing 6.351 acres.

"Z"

PRIVATE CLAIM NO. 21, PARCEL NUMBER 1.  
CATHOLIC CHURCH (Farm Land).

Beginning at an iron post, Cor. No. 1 of this claim, from which closing corner between sections 20 and 21 bears N. 89° 58' E. 11.74 chains; thence N. 65° 45' W., 6.58 chains to Cor. No. 2; thence S. 25° 57' W., 2.97 chains to Cor. No. 3; on the eastern boundary of the El Ranchito Grant; thence N. 89° 58' E., 7.22 chains to Cor. No. 1 and place of beginning, containing 0.84 A.

"Z-1"

PRIVATE CLAIM NO. 21, PARCEL NUMBER 2.  
CATHOLIC CHURCH (Chapel).

Beginning at an iron post marked Cor. No. 1 of this claim from which the intersection of the S. line of section 16 and the N. line of section 21, Township 13 North, Range 4 East, bears N. 54° 45' W., .604 chains; thence N. 64° 45' W. 1.265 chains to Cor. No. 2; thence S. 24° 50' W., 0.59 chains to Cor. No. 3; thence S. 59° 30' E., 1.30 chains to Cor. No. 4; thence N. 22° 15' E., .708 chains to Cor. No. 1, and place of beginning; containing 0.83 acres.

"Z-2"

PRIVATE CLAIM NO. 17, PARCEL NUMBER 1.

VIRGINIA PEREA,  
CARLOTA P. OTERO,  
BARBARA PEREA YRISARRI.

Beginning at Cor. No. 1 of this claim (which is also Cor. No. 2, P. C. 16 P. 1); thence S. 89° 51' W., along boundary of the El Ranchito Grant 9.51 chains to A. P. 5 on the N. boundary of the Bernalillo Grant, and on boun-



dary of the El Ranchito Grant, to Cor. No. 2; thence N. 89° 59' W., along boundary of the El Ranchito Grant 3.21 chains to an iron post, Cor. No. 3; thence N. 69° 02' W., along boundary of this claim 30.18 chains to an iron post, Cor. No. 4; thence N. 9° 30' E., along boundary of this claim 5.57 chains to Cor. No. 5; thence S. 67° 50' E., along boundary common to P. C. 16 P. 1, 43.16 chains to Cor. No. 1 and place of beginning; containing 18.623 acres.

That the respective railway, telegraph, and telephone lines of defendants, The Atchison, Topeka and Santa Fe Railway Company, The Western Union Telegraph Company, The Postal Telegraph-Cable Company of New Mexico, and the Mountain States Telephone and Telegraph Company cross the entire El Ranchito tract in a northeasterly and southwesterly direction, and each of said defendants claims some right, title or interest in and to a right of way for its line or lines, but whether said defendants claim easements or fee titles to their respective alleged rights of way is to this plaintiff unknown.

9. That defendants Maurico Montoya, Francisquita Valdez, Mrs. Julianita Valdez, Mrs. Emilia Valdez, Manuel Gutierrez, Miguel Montoya, Onesimo Valdez, Mrs. Porfilia Archebueque, Jesus Teofilo Valdez, Francisco Griego, Diego Gutierrez, Mrs. Juana Gallegos, Mrs. Genoveva Griego, Juan N. Griego and Remedios Baca, as plaintiff is informed and believes, claim some right or rights, title or titles, interest or interests, the exact nature, character, extent or pretended basis whereof is unknown to plaintiff, adverse to said Pueblo and the Indians thereof, and constituting a cloud upon the title of said Pueblo and said Indians in and to portions of said 29.69 acre tract lying within said Felipe Gutierrez or Bernalillo Grant.

10. That the claims of all defendants herein named, whether to portions of said El Ranchito Purchase or to said 29.69 acre tract, or to any of the lands of said Pueblo of Santa Ana, are without right, and that said defendants have not, nor has any of them, any estate, right, title or interest whatsoever in or to any of said Pueblo lands, or any part thereof, other than whatever claim, right or title, if any, certain of said defendants have to the lands included within said excepted tracts numbered 1 to 21, upon said El Ranchito Purchase; that said defendants have from time to time entered upon portions of said El Ranchito Purchase to which said Board has found the Indian title to be unextinguished, and especially upon the tracts hereinabove described as tracts "X," "Y," "Z," "Z-1," and "Z-2" and committed acts of trespass thereon by using the same for occasional pasturage or cultivation and by attempting to make settlements thereon, and by surveying or attempting to survey portions thereof and by designating thereon boundaries of tracts by running furrows, driving stakes or otherwise, and threaten to continue so to do; and that other of defendants, above designated, have claimed and still claim some right, title or interest in, along with the right of possession of, said 29.69 acre tract as hereinabove stated.

11. That the Pueblo Lands Board has heretofore determined that all the lands constituting said original Pueblo Grant, said El Ranchito Purchase and said 29.69 acre tract, with the exception of the tracts above and in paragraph 6 hereof mentioned and referred to as Exceptions 1 to 21, are Indian lands, the Indian title to which has not been extinguished, as shown by the Board's report filed in this Court on or about, to-wit: July 19, 1927;

and that said Board has specifically determined that the land comprised in the tracts and parcels hereinabove and in paragraph 8 hereof specifically described, is Indian land, the Indian title to which has not been extinguished, as shown by said report of said Board.

12. That many of the defendants above named possess and other of said defendants claim to possess alleged deeds and other instruments of writing purporting to convey to them or to their grantors immediate or remote, and through inheritance or mesne conveyances to said defendants, the premises above described as Indian lands, the Indian title to which has not been extinguished; that many of said deeds and other instruments have been placed on record in the office of the County Clerk of Sandoval County, New Mexico, and that defendants threaten similarly to record the remainder of said deeds or instruments in the office of said County Clerk; that some of said alleged deeds and instruments of conveyance purport to be given by the Pueblo of Santa Ana, others by individual Indians thereof, and others by non-Indian intruders upon said Pueblo lands; and that each and all of said deeds and instruments are null and void, either because not given by the governing authorities of said Pueblo, or as not having been given prior to January 6, 1912, or as being given by a Pueblo incompetent to convey; or by incompetent Indians *non sui juris* and wards of this plaintiff, or by non-Indians owning none of and possessing no title to any land of said Pueblo, and having no right to convey the same, or for other reasons; that by reason of the foregoing, the title of said Pueblo of Santa Ana and the Indians thereof to the land hereinabove described has been and is clouded, and will be further clouded and rendered uncertain; that said deeds

and instruments are in possession of defendants, and that their contents, the circumstances of their procurement and execution, the identity and status of the parties thereto, and all facts relevant to their invalidity and to the allegations of this paragraph are within the knowledge of said defendants and more within their knowledge than within the knowledge of plaintiff.

13. That the claims of said defendants are all subordinate to the single title and right of said Pueblo and cast a cloud upon its title and possession, and threaten to exclude said Pueblo and the Indians thereof from the peaceable enjoyment of the lands hereinabove averred to be owned by it.

That damages at law are inadequate to remedy or compensate for the injuries herein set forth; that the right and title of said Pueblo of Santa Ana to the lands owned by it, as above averred, can not be enforced at law without a multiplicity of suits all involving the same questions and the consideration of the same statutes, either of the United States or of the State or former Territory of New Mexico; that the right of said Pueblo and the Indians thereof to protection against the trespasses of defendants continuing and threatening to continue as aforesaid, and the removal of the cloud existing by reason of the alleged deeds and instruments aforesaid can only be adequately enforced in equity.

That, in addition to the claims of defendants involved in this suit, and attaching to the lands of the Pueblo of Santa Ana, between 3,500 and 4,000 similar claims of other persons are in existence and attach to the patented and other lands of the Pueblos in the State of New Mexico



held under titles similar to that of the Pueblo of Santa Ana; that this Court will be required to pass on many of said additional adverse claims under the requirements of said Pueblo Lands Act of June 7, 1924; and that, unless the United States shall be permitted to join as defendants in its bill to quiet title to the lands of each Pueblo, the numerous claimants thereto, against each of whom it has a like cause of action, and against each of whom it seeks the same relief, and whose pretended claims are based upon similar facts, and involve the same questions of law, it will be driven to bring a great number of distinct and separate actions; and that it will be practically impossible for the United States to prosecute and for the Court to adjudicate and dispose of so large a number of separate and distinct suits within any reasonable length of time; that, by reason of the matters and things aforesaid, plaintiff and said Pueblo have no plain, adequate or complete remedy at law.

WHEREFORE, plaintiff prays that said defendants and each of them be required to disclose and set forth the facts and nature of any claim or claims whatsoever made or asserted by them adverse to the claim, right, and title of said Pueblo of Santa Ana, as aforesaid; and that thereupon it may be adjudged and decreed that any and all right, title or interest claimed or asserted by said defendants, or any of them, in or to or upon the lands and premises hereinabove averred to be owned by said Pueblo of Santa Ana and the Indian title whereto has heretofore been found by said Pueblo Lands Board to be unextinguished, may be adjudged and decreed to be null and void, and that it be adjudged and decreed that said defendants have not, nor has any of them any estate, right,

title, or interest whatsoever in or to said land and premises; that the title to said premises and all thereof may be quieted in said Pueblo; that an injunction may issue perpetually enjoining and restraining defendants, and all of them, and their agents and representatives from further asserting any right, title or interest in or to said Indian lands above described, and from trespassing thereon or interfering with the full possession and control thereof by said Pueblo of Santa Ana; that any and all alleged deeds or instruments of conveyance or inheritance of any sort or description in the possession or under the control of said defendants or any of them, and purporting to convey, devise or affect the title of the premises hereinabove described as being claimed by said defendants, or any part of said premises or interest therein, may, insofar as they cover, convey or concern said premises, be decreed to be null and void and of no effect as against plaintiff or said Pueblo of Santa Ana or the Indians thereof; and that said defendants be ordered to surrender said deeds or instruments to the Court for cancellation; and that plaintiff may have such other and further relief as to the Court may seem proper.

GEORGE A. H. FRASER  
Special Assistant to the  
Attorney General,  
C/O Pueblo Lands Board,  
Santa Fe, New Mexico,  
*Attorney for Plaintiff.*

## MARSHAL'S RETURN

UNITED STATES OF AMERICA )  
 ) SS:  
 DISTRICT OF NEW MEXICO )

I, Joseph F. Tondre, United States Marshal for the District of New Mexico, hereby certify that the within writ came to hand on the 15th day of December A. D. 1927, and that same was duly executed by delivering to the within named defendants on the dates, at the places and in the manner mentioned in the list attached hereto, a true copy of the within writ, together with a copy of the complaint thereto attached at places indicated in list attached hereto in Sandoval County, State of New Mexico.

WITNESS my hand this 30th day of December, 1927.

Joseph F. Tondre  
 Marshal

By /s/ Daniel Padillo  
 Deputy Marshal

## MARSHAL'S FEES

Service ..... person ..... at \$2.00 each — \$.....

Mileage ..... miles at 12¢, (going only) .....

.....  
 Total.....

No. 1814 Equity

UNITED STATES DISTRICT COURT  
 DISTRICT OF NEW MEXICO  
 Sitting at Santa Fe

In Chancery

U. S. A. as Guardian of the Pueblo of Santa Ana, in  
 the State of New Mexico

vs.

Charles F. Brown, et al.

## SUBPOENA

## ORIGINAL

George A. H. Fraser, Esq.,  
 Denver, Colo.

Solicitor for Complainant

## MARSHAL'S RETURN

UNITED STATES OF AMERICA )  
 ) SS:  
 DISTRICT OF NEW MEXICO )

I, \_\_\_\_\_, 192....  
 United States Marshal for the District of New Mexico, hereby certify that the within writ came to hand on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 192 , and that after diligent search I was unable to find the within-named person \_\_\_\_\_ within my district.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 192...

\_\_\_\_\_  
 Marshal.

By \_\_\_\_\_  
 Deputy Marshal.

\_\_\_\_\_ \$\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

EXHIBIT "B" TO ANSWER  
IN THE DISTRICT COURT  
UNITED STATES OF AMERICA  
DISTRICT OF NEW MEXICO

No. 1814

In Equity

United States of America as Guardian of the Pueblo  
of Santa Ana in the State of New Mexico,

Plaintiff

v.

Charles F. Brown, et al.,

Defendants

MOTION TO DISMISS

Comes now the plaintiff above named by its attorney  
and moves that the Bill of Complaint herein be dismissed  
as to defendant, the Mountain States Telephone & Tele-  
graph Company, a corporation, and for grounds of this  
motion plaintiff says:

That subsequent to the institution of this suit said de-  
fendant has obtained a deed from the Pueblo of Santa Ana  
approved April 13, 1928, by the Secretary of the Interior  
in accordance with Section 17 of the Pueblo Lands Act of  
June 7, 1924, and that thereby said defendant has obtained,  
for an adequate consideration, good and sufficient title to  
the right of way in controversy herein between plaintiff  
and said defendant.

/s/ George A. H. Fraser  
Spec. Asst. to Attorney General  
Attorney for Plaintiff.

EXHIBIT "C" TO ANSWER  
IN THE DISTRICT COURT  
UNITED STATES OF AMERICA  
DISTRICT OF NEW MEXICO

No. 1814

In Equity

United States of America as Guardian of the Pueblo  
of Santa Ana in the State of New Mexico

Plaintiff

v.

Charles F. Brown, et al.,

Defendants

ORDER OF DISMISSAL

This cause coming on to be heard upon plaintiff's  
Motion to dismiss as to defendant, the Mountain States  
Telephone & Telegraph Company, a corporation, and it ap-  
pearing to the court that since the institution of this suit  
said defendant has secured good and sufficient title to the  
right of way and premises in controversy herein between  
plaintiff and said defendant by deed from the Pueblo of  
Santa Ana approved April 13, 1923, by the Secretary of  
the Interior in accordance with the provisions of Section  
17 of the Pueblo Lands Act of June 7, 1924,

IT IS HEREBY ORDERED that this suit be, and it  
is hereby, dismissed as to said defendant.

Given at Santa Fe, New Mexico, this 31st day of May,  
A. D. 1928.

BY THE COURT  
/s/ Colin Neblitt  
Judge



## EXHIBIT "D" TO ANSWER

THIS AGREEMENT, Made this 23 day of February, A. D. 1928, between PUEBLO De SANTA ANA, a New Mexico corporation, by Emiliano Otero, Governor of Pueblo de Santa Ana, Jose Rege Leon, Lieutenant Governor of Pueblo Santa Ana, Cursito Loretto, Captain of Pueblo de Santa Ana, Jose Profina, Lieutenant of Pueblo de Santa Ana, ———, of Pueblo de Santa Ana, and Jose Martine, Fiscal of Pueblo de Santa Ana, party of the first part, and THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, a Colorado corporation, party of the second part,

## WITNESSETH :

THAT, WHEREAS, the party of the first part is the owner of certain land situated in the County of Sandoval, New Mexico, which is known as El Ranchito Grant, and which forms a part of the Santa Ana Pueblo Grant, and is included within the boundaries of the Pueblo de Santa Ana; and

WHEREAS, the party of the second part desires to construct, maintain and operate a telephone and telegraph line over, across, through and under the said land at the location hereinafter described; and

WHEREAS, the party above named and designated as the party of the first part herein is a corporation created under the laws of the State of New Mexico, and the persons executing this agreement on behalf of the said party of the first part are the governing officials of the said party of the first part, with full power and authority to execute instruments conveying easements and rights of

way across the lands owned and controlled by the said party of the first part in New Mexico, subject, however, to the approval of the Secretary of the Interior; and

WHEREAS, it is the desire of the party of the first part to execute, for itself and on behalf of the inhabitants thereof, an instrument granting to the party of the second part the right, privilege and authority to construct, maintain and operate a telephone and telegraph pole line, including the necessary poles, cables, conduits, wires and fixtures, with the right to permit the attachment of the wires of any other party, and the right to trim any trees along said lines so as to keep the wires cleared at least forty-eight (48) inches, and to set the necessary guy and brace poles and anchors, and to attach thereto the necessary guy wires, over, along, under and across those certain lands situated within the boundaries of the Pueblo de Santa Ana, State of New Mexico, and particularly across what is sometimes known as El Ranchito Grant, the exact location of which is herein more specifically described.

NOW, THEREFORE, in consideration of the premises, and the further consideration of One Hundred One and 60/100 Dollars (\$101.60), and other good and valuable considerations in hand paid to the party of the first part by the party of the second part, the receipt whereof is hereby acknowledged, the party of the first part, for itself and on behalf of the inhabitants of the Pueblo de Santa Ana, does hereby grant, bargain and sell unto the party of the second part, its successors and assigns, an easement to construct, maintain and operate a telephone and telegraph pole line, including the necessary poles, cables, conduits, wires and fixtures, with the right to permit the attachment of the wires of any other party, and the right to

trim any trees along said lines so as to keep the wires cleared at least forty-eight (48) inches, and to set the necessary guy and brace poles and anchors, and to attach thereto the necessary guy wires, over, along, under and across the following described property known as El Ranchito Grant, a part of the Santa Ana Pueblo in the County of Sandoval, State of New Mexico, the location of said right of way being more particularly described as follows:

Beginning at a point on the south boundary of El Ranchito Grant, Section Twenty-one (21) Township Thirteen (13) North, Range Four (4) East, from which point the three and one-half mile corner bears north 89° 58' east 1389.5 feet; thence in a general northeasterly direction across El Ranchito Grant to the north boundary of said grant, from which point the northeast corner of El Ranchito Grant bears south 89° 00' east 2773.1 feet, a total distance of 2.988 miles. (The exact location of said right of way is shown on the map hereto attached and made a part hereof.) [No map was presented to the Tenth Circuit.]

It is understood that only an easement for the construction and maintenance of a telephone and telegraph line, and the fixtures thereto attached, is hereby granted, and that the party of the first part, and the inhabitants of said Pueblo, retain the right to cultivate said land, or to otherwise use it in any manner whatsoever, provided such cultivation or use thereof does not interfere with the construction, maintenance and operation of the said telephone and telegraph line, and the fixtures thereon.

It is understood that the party of the second part, its successors and assigns, shall have the right of ingress, egress and regress to do any and all work necessary to properly maintain and operate said line or lines.

IN WITNESS WHEREOF, the said party of the first part has caused this instrument to be executed by its duly authorized officers, for itself and on behalf of the inhabitants of said Pueblo de Santa Ana, New Mexico, and the party of the second part has caused this instrument to be executed by its duly authorized officers the day and year first above written.

PUEBLO De SANTA ANA,

By Emiliano Otero  
Its Governor

By Jose Reye Leon  
Its Lieutenant Governor  
(His Mark)

By Crusito Loretto  
Its Captain (His Mark)

By Jose Profinio  
Its Lieutenant (His Mark)

By Jose Martine  
Its Fiscal (His Mark)  
Party of the First Part,

THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY,

By /s/ H. E. McAfee  
Its Vice President,  
Party of the Second Part.

Attest:

/s/ (Illegible)  
Secretary.

STATE OF NEW MEXICO, )  
 ) SS.  
COUNTY OF SANDOVAL )

On this 23 day of February, 1928, before me appeared Emiliano Otero, Jose Rege Leon, Cristo Loretto, Jose Profinio, and Jose Martine, to me personally known, who, being by me duly sworn, did say that they are the Governor, Lieutenant Governor, Captain, Lieutenant, and Fiscal of the Pueblo de Santa Ana, New Mexico, respectively; and that the said instrument was signed by them on behalf of the said Pueblo de Santa Ana, and the inhabitants thereof, by authority of its Board of Principals made and provided, and the said Emiliano Otero, Jose Rege Leon, Cristo Loretto, Jose Profinio, and Jose Martine acknowledged said instrument to be the free act and deed of the said Pueblo de Santa Ana, and their free act and deed, and that the said Pueblo de Santa Ana has no corporate seal, and that said instrument has been read and interpreted to each of them, and that each of them knows the contents thereof.

Given under my hand and notarial seal this 23 day of February, A. D. 1928.

My commission expires July 8, 1931.

/s/ Al. Matthieu  
Notary Public.

STATE OF COLORADO,     )  
                                      ) SS.  
City and County of Denver.     )

On this 23d day of March, 1928, before me appeared H. E. McAfee, to me personally known, who, being by me duly sworn, did say that he is the Vice President of The Mountain States Telephone and Telegraph Company, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was

signed and sealed on behalf of said corporation by authority of its Board of Directors, and that said H. E. McAfee acknowledged said instrument to be the free act and deed of said corporation.

Given under my hand and notarial seal this 23d day of March, A. D. 1928.

My commission expires December 7, 1930.

/s/ Lillian F. Levitt  
Notary Public.

# DEPARTMENT OF THE INTERIOR

April 13, 1928.

APPROVED, pursuant to the provisions of Section 17 of the Act of June 7, 1924 (43 Stat. L. 636).

/s/ John H. Edwards  
Assistant Secretary

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## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

(Title Omitted in Printing)

### MOTION TO STRIKE AFFIRMATIVE DEFENSES AND FOR PARTIAL JUDGMENT ON THE PLEADINGS

(Filed March 30, 1931)

Plaintiff, by and through its counsel, moves the Court, pursuant to Rule 12(f), F.R.Civ.P., for an order striking defendant's First, Second, Third, Fourth, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fifteenth, Seventeenth and Nineteenth Affirmative Defenses, or, alternatively, for partial judgment on the pleadings pursuant to



Rule 12(c), F.R.Civ.P., and as grounds therefore states as follows:

1) Each of the above-enumerated Affirmative Defenses is, on its face, insufficient as a matter of law to bar plaintiff's claim.

2) None of the Affirmative Defenses listed presents substantial or disputed questions of fact.

3) The Affirmative Defenses listed will, if not stricken, unnecessarily confuse the issues herein and burden the plaintiff and will substantially prejudice plaintiff's ability to present its case.

4) Affirmative Defenses Numbers One and Three are not accompanied by a supporting memorandum as required by Local Rule 5(c) and (d).

5) As to the Third Affirmative Defense, to which a motion to strike technically may not be appropriate, there is no controverted question of fact and plaintiff is entitled to judgment on this issue as a matter of law.

6) These and other reasons are more fully set forth in the accompanying memorandum, which is incorporated herein by reference.

Concurrence of opposing counsel has not been sought herein, as it is assumed such concurrence would be refused.

Respectfully submitted,

LUEBBEN, HUGHES & KELLY  
805 Tijeras, NW  
Albuquerque, NM 87102  
(505) 842-6123

By /s/ John J. Kelly  
Attorneys for Plaintiff

(Certificate of Mailing Omitted in Printing)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

(Title Omitted in Printing)

MINUTE ORDER

(Filed April 15, 1981)

BY DIRECTION OF THE COURT:

It is ORDERED that plaintiff's Motion to Strike Affirmative Defenses be, and the same hereby is, DENIED.

/s/ Jesse Casaus  
Clerk

/s/ Rita Guigo  
Deputy Clerk

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

(Title Omitted in Printing)

O R D E R

(Filed July 23, 1981)

This matter comes on for consideration on plaintiff's motion to alter my order of April 15, 1981 to allow an interlocutory appeal pursuant to 28 U.S.C. § 1292(b) (1976). Having considered plaintiff's motion and defendant's response, I find that the motion is not well taken and should be denied.

The order which plaintiff requests appeal from denied plaintiff's motion to strike several of defendant's affirmative defenses. I will alter that order to strike defendant's

affirmative defenses numbered one, two and three. Defendant has conceded the unavailability of those defenses in this law suit. The facts of this case must be developed further to determine the applicability of defendant's affirmative defense number four. The remaining affirmative defenses which I declined to strike raise equitable defenses under state law. Plaintiff argues the defenses are unavailable because of the Indian Non-Intercourse Act of June 30, 1834, 25 U.S.C. § 177 (1976). Defendant argues the Act had no application to Pueblo Indians when defendant's predecessor constructed its telephone line and that state equitable defenses are specifically authorized by the Pueblo Lands Act of 1924. 43 Stat. 636.

Plaintiff has not addressed these arguments and I have not decided whether the defenses are available to defeat plaintiff's claims. Appeal would be premature. Now, Therefore,

IT IS ORDERED that my order of April 15, 1981 shall be, and hereby is amended to strike defendant's affirmative defenses numbered one, two and three.

IT IS FURTHER ORDERED that plaintiff's motion to certify an interlocutory appeal shall be, and hereby is, denied.

/s/ E. L. Mechem  
United States District Judge

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

(Title Omitted in Printing)

MOUNTAIN BELL'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT

(Filed December 30, 1981)

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, The Mountain States Telephone and Telegraph Company (Mountain Bell) moves the Court for a Partial Summary Judgment denying and dismissing the Plaintiff's claims for trespass for the period 1928 to date.

There are two (2) independent grounds for this motion, each of which is sufficient for the granting of the motion:

1. The Defendant is not a trespasser for the reason that the Plaintiff granted to the Defendant an easement or right to construct and maintain the telephone line that is the subject of this suit by an Agreement dated February 23, 1928 between the Plaintiff and Defendant and approved by the Secretary of the Interior on April 13, 1928 pursuant to § 17 of the Act of June 7, 1928 (43 Stat.L. 636).

2. The Plaintiff's claims for trespass are barred by reason of a prior suit between Plaintiff and Defendant brought to adjudicate Mountain Bell's rights to construct and maintain the subject telephone line, from which suit Mountain Bell was dismissed by an order of court dated May 31, 1928 which found that Mountain Bell had, since the institution of the suit, "... secured good and sufficient title to the right-of-way and premises".

For purposes of this motion, there is no genuine issue as to any material fact and Mountain Bell is entitled to the partial summary judgment as a matter of law, all as more fully set forth in the memorandum filed in support of this motion.

The concurrence of opposing counsel to this motion was not requested because it is assumed that Plaintiff opposes the motion.

/s/ Stuart S. Gunckel

/s/ John R. Stoller

Suite 1300, 931-14th Street  
Denver, Colorado 80202  
(303) 624-2200

H. PERRY RYON  
Plaza Campana  
P. O. Box 400  
Station 733  
Albuquerque, New Mexico 87103-400  
(505) 765-5621

Attorneys for The Mountain States  
Telephone and Telegraph Company

Address of Mountain Bell:

Plaza Campana  
P. O. Box 400  
Station 733  
Albuquerque, New Mexico 87103-400

(Certificate of Mailing Omitted in Printing)

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

(Title omitted in printing)

A P P E N D I X

TO

MOUNTAIN BELL'S MEMORANDUM IN SUPPORT  
OF MOTION FOR PARTIAL SUMMARY JUDGMENT  
(Filed December 30, 1981)

STUART S. GUNCKEL

JOHN R. STOLLER

Suite 1300, 931-14th Street  
Denver, Colorado 80202  
(303) 624-2200

H. PERRY RYON

Plaza Campana  
P. O. Box 400  
Station 733  
Albuquerque, New Mexico 87103-400  
(505) 765-5621

Attorneys for The Mountain States  
Telephone and Telegraph Company

Address of Mountain Bell:

Plaza Campana  
P. O. Box 400  
Station 733  
Albuquerque, New Mexico 87103-400

I

(Statutes omitted in printing.)

II

(Material regarding 1927 Action omitted in printing.  
Material can be found at J.A. 14-43.)

III

INTERROGATORY ANSWERS

1. Interrogatory No. 7
2. Interrogatory No. 8
3. Interrogatory No. 9
4. Interrogatory No. 10
5. Interrogatory No. 14



## INTERROGATORY NO. 7

Describe the facts and circumstances and reasons upon which you rely to support your contention that the Plaintiff is an Indian Tribe recognized by the United States; identify all documents which pertain or relate to that contention.

## ANSWER:

The Pueblo of Santa Ana has historically been recognized as a dependent Indian community by the United States of America. This recognition and the resulting trust relationship is documented in the attached "Exhibit B", which is a listing of tribal governments recognized by the United States as of April 24, 1980, 45 Fed.Reg. 27828.

## INTERROGATORY NO. 8

Describe the El Ranchito Grant and the history of the Plaintiff's claims to and interests in the lands involved in this suit; and describe all steps taken and identify all proceedings pursued to assert such claims and interests, including the dates that such steps and proceedings were taken and the results and conclusions of those steps and proceedings. Identify all documents which pertain to or relate to the Plaintiff's claims and interests and the steps and proceedings pursued.

## ANSWER:

El Ranchito was purchased by the Pueblo of Santa Ana in five transactions between the years 1709 and 1763. See Exhibit A, pages 31, 39-42. Copies of the deeds with descriptions will be furnished as soon as they become available. A patent to El Ranchito was issued in 1909

pursuant to a determination as to title made by the Court of Private Land Claims in 1900. The patent is included in Plaintiff's response to the document request.

## INTERROGATORY NO. 9

Identify the person who holds legal title to the lands alleged to be involved in the trespass claim of the Plaintiff against the Defendant and state the date the person acquired title. Identify the documents which relate or pertain to the legal title and the person holding it.

## ANSWER:

Title to El Ranchito is held by the Pueblo of Santa Ana in fee simple, subject to the federal trusteeship. No individual person or persons has title. The federal trust prohibits alienation of the land or any interest therein without consent of the United States. Title to El Ranchito was obtained by deed to the Pueblo of Santa Ana in three separate transactions, dating between 1709 and 1763. These transactions are more fully set out in the deeds and in the decision of the Court of Private Land Claims, entitled *Pueblo of Santa Ana and the inhabitants thereof v. United States*, No. 157, which was filed on May 31, 1897 and finalized on December 7, 1900. A patent from the United States to the Pueblo of Santa Ana was subsequently issued pursuant to that decision, which patent is dated October 18, 1909. The patent encompasses the same lands as were deeded to the Pueblo in the 1700's. All of the documents relevant to these transactions are provided in attachments hereto, or will be provided as soon as they are available to plaintiff. The originals of the deeds are in the Archives of the State of New Mexico.

## INTERROGATORY NO. 10

Did the Pueblo of San Felipe or any other person ever claim title to or an interest in the lands which are involved in this suit? If so, as to each such claim:

- (a) Identify the persons who made the claim;
- (b) Describe the claim made;
- (c) State the date that the claim was made;
- (d) State the manner in which the claim was made;
- (e) Describe the lands and the portion of the telephone line across those lands which were involved in the claim;
- (f) Identify any legal or administrative proceedings involving the claim; and
- (g) Describe the resolution and current status of the claim.

ANSWER:

No

## INTERROGATORY NO. 14

At any time since 1904, has the Plaintiff or anyone else notified or informed Mountain Bell that the telephone line across the lands claimed by the Plaintiff trespassed upon or was on the land without authority or legal right to be there? If so:

- (a) State each date when Mountain Bell was so notified;
- (b) Identify the persons notifying Mountain Bell;
- (c) Identify all persons at Mountain Bell who were so notified;
- (d) Identify all documents which indicate or relate to such notification or lack thereof.

ANSWER:

Plaintiff at this time knows of no specific instance when defendant was given notice that it was trespassing on plaintiff's land, other than in the quiet title action filed in 1927 known as "The United States of America, as guardian of the Pueblo of Santa Ana, in the State of New Mexico, Plaintiff, versus Charles F. Brown, *et al.*, Defendants, No. 1814 in equity, in the United States District Court, District of New Mexico."

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 IV

 RESPONSE TO REQUEST  
FOR ADMISSIONS

1. Plaintiff's Responses to Defendants Request for Admissions (First Set)

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(Title omitted in printing)

 PLAINTIFF'S RESPONSE TO DEFENDANT'S  
REQUEST FOR ADMISSIONS (FIRST SET)

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, the Plaintiff responds to the Defendant's Request for Admissions as follows:

#### REQUEST FOR ADMISSIONS NO. 1:

The telephone line involved in this suit was removed on March 21 to 31, 1980, and no longer traverses the lands claimed by the Plaintiff.

#### RESPONSE TO REQUEST NO. 1:

Plaintiff has no knowledge of the facts stated in this request, and thus cannot admit or deny them except to say that from visual inspection the pole line appears at the present time to be absent from its previous location.

#### REQUEST FOR ADMISSIONS NO. 2:

The agreement dated February 23, 1928 between Pueblo de Santa Ana and Mountain Bell, a copy of which is attached as Exhibit "D" to the Defendant's Answer, was signed by and on behalf of the Pueblo de Santa Ana.

#### RESPONSE TO REQUEST NO. 2:

Plaintiff admits that the document appears to have been signed or thumbprinted by officers of the Pueblo. Plaintiff has no knowledge of the circumstances surrounding the execution of the document or whether the officers acted with proper authority, beyond what is stated in the document itself, and all persons with such knowledge are deceased; Plaintiff is thus unable in good faith to admit or deny the balance of this request. Plaintiff assumes, however, that the officers acted with such authority as they possessed.

#### REQUEST FOR ADMISSIONS NO. 3:

The agreement dated February 23, 1928 between Pueblo de Santa Ana and Mountain Bell, a copy of which is attached as Exhibit "D" to the Defendant's Answer, was approved by the Department of Interior on April 13, 1928.

#### RESPONSE TO REQUEST NO. 3:

Plaintiff admits that the agreement was signed by a Mr. John H. Edwards on behalf of the Department of the Interior, on or about April 13, 1928. Whether or not that constitutes "approval", Plaintiff believes, calls for a legal conclusion, and to that extent the Request is objected to.

#### REQUEST FOR ADMISSIONS NO. 4:

The persons who signed for and behalf of the Pueblo de Santa Ana, the agreement dated February 23, 1928 between Pueblo de Santa Ana and Mountain Bell, a copy of which is attached to the Defendant's Answer as Exhibit "D", had the power and authority to execute the agreement on behalf of the Pueblo de Santa Ana.

#### RESPONSE TO REQUEST NO. 4:

As stated in Response to Request No. 2, Plaintiff has no knowledge as to whether the persons who executed the document acted with proper authorization from the tribe, and there is no way to determine whether they did. Plaintiff assumes, however, that they acted with such authority as they possessed.

#### REQUEST FOR ADMISSIONS NO. 5:

The Department of Interior had the power and authority to approve the agreement dated February 23, 1928



between Pueblo de Santa Ana and Mountain Bell, a copy of which is attached as Exhibit "D" to the Defendant's Answer.

#### RESPONSE TO REQUEST NO. 5:

This Request is objected to on the grounds that it asks for a bare legal conclusion.

#### REQUEST FOR ADMISSIONS NO. 6:

The agreement dated February 23, 1928 between Pueblo de Santa Ana and Mountain Bell, a copy of which is attached as Exhibit "D" to the Defendant's Answer, was and is legal, valid and binding on the Plaintiff.

#### RESPONSE TO REQUEST NO. 6:

This Request is objected to on the grounds that it asks for a bare legal conclusion.

#### REQUEST FOR ADMISSIONS NO. 7:

The agreement dated February 23, 1928 between Pueblo de Santa Ana and Mountain Bell, a copy of which is attached as Exhibit "D" to the Defendant's Answer, pertains to and involves the same telephone line and lands of the Plaintiff which are the subject of the case at bar and, further, the subject telephone line across the lands claimed by the Plaintiff was not rerouted or relocated subsequent to the execution of the agreement and prior to the removal of the poles in 1980.

#### RESPONSE TO REQUEST NO. 7:

Plaintiff assumes that the document refers to the same line that is the subject of this action. Plaintiff has no

knowledge that the line was ever rerouted or relocated or of any facts pertaining to its removal, but cannot in good faith admit or deny the portion of this Request pertaining thereto.

#### REQUEST FOR ADMISSIONS NO. 8:

The Plaintiff was a party to or represented in the lawsuit, The United States of America, as Guardian of the Pueblo of Santa Ana, in the State of New Mexico, Plaintiff, versus, Charles F. Brown, et al, Defendants, No. 1814 in equity in the United States District Court, District of New Mexico.

#### RESPONSE TO REQUEST NO. 8:

Denied.

#### REQUEST FOR ADMISSIONS NO. 9:

The Mountain States Telephone and Telegraph Company was a party to the lawsuit, The United States of America, as Guardian of the Pueblo of Santa Ana, in the State of New Mexico, Plaintiff, versus, Charles F. Brown, et al, Defendants, No. 1814 in equity in the United States District Court, District of New Mexico.

#### RESPONSE TO REQUEST NO. 9:

Admitted.

#### REQUEST FOR ADMISSIONS NO. 10:

The Plaintiff claimed in the lawsuit, The United States of America, as Guardian of the Pueblo of Santa

Ana, in the State of New Mexico, Plaintiff, versus, Charles F. Brown, et al, Defendants, No. 1814 in equity in the United States District Court, District of New Mexico, that Mountain Bell had no right or interest in and trespassed on the property of Pueblo of Santa Ana with the same telephone line which is involved in the instant case.

RESPONSE TO REQUEST NO. 10:

Denied.

REQUEST FOR ADMISSIONS NO. 11:

In the lawsuit, The United States of America, as Guardian of the Pueblo of Santa Ana, in the State of New Mexico, Plaintiff, versus, Charles F. Brown, et al, Defendants, No. 1814 in equity in the United States District Court, District of New Mexico, the Plaintiff moved to dismiss Mountain Bell from the suit for the reason that, subsequent to the institution of that suit, Mountain Bell had obtained, for an adequate consideration, good and sufficient title to the right-of-way in controversy herein between Plaintiff and Defendant.

RESPONSE TO REQUEST NO. 11:

Denied.

REQUEST FOR ADMISSIONS NO. 12:

In the lawsuit, The United States of America, as Guardian of the Pueblo of Santa Ana, in the State of New Mexico, Plaintiff, versus, Charles F. Brown, et al, Defendants, Action No. 1814 in equity in the United

States District Court, District of New Mexico, on May 31, 1928, the court dismissed Mountain Bell from the suit for the reason that, since the institution of the suit, Mountain Bell had secured good and sufficient title to the right-of-way and premises in controversy herein between Plaintiff and Defendant.

RESPONSE TO REQUEST NO. 12:

Plaintiff admits that Mountain Bell was dismissed from the referenced action, but has no information on and cannot ascertain the motivation behind such dismissal other than what appears in the order of dismissal.

REQUEST FOR ADMISSIONS NO. 13:

By reason of the claims, motion to dismiss and findings and order of the court in the lawsuit, The United States of America, as Guardian of the Pueblo of Santa Ana, in the State of New Mexico, Plaintiff, versus, Charles F. Brown, et al, Defendants, Action No. 1814 in equity in the United States District Court, District of New Mexico, the trespass claims of the Pueblo de Santa Ana in the case at bar are barred by collateral estoppel or res judicata.

RESPONSE TO REQUEST NO. 13:

This Request is objected to on the grounds that it asks for a bare legal conclusion.

REQUEST FOR ADMISSIONS NO. 14:

The lawsuit The United States of America, as Guardian of the Pueblo of Santa Ana, in the State of New

Mexico, Plaintiff, versus, Charles F. Brown, et al, Action No. 1814 in equity in the United States District Court, District of New Mexico, pertains to and involves the same telephone line and lands of the Plaintiff which are the subject of the case at bar and, further, the subject telephone line across the lands claimed by the Plaintiff was not rerouted or relocated subsequent to Mountain Bell's dismissal from the lawsuit and prior to the removal of the poles in 1980.

#### RESPONSE TO REQUEST NO. 14:

Plaintiff cannot in good faith admit or deny that the referenced action pertained to or involved the same line as is the subject of the instant litigation, inasmuch as the complaint does not provide any particulars as to Mountain Bell's involvement and Plaintiff cannot ascertain with any certainty what was intended thereby. As to the question of rerouting or relocation of the line, Plaintiff incorporates herein its Response to Request No. 7.

#### REQUEST FOR ADMISSIONS NO. 15:

The Pueblo of Santa Ana knew of the construction, existence, use, service or maintenance of the telephone line across the Plaintiff's property:

- (a) In 1905;
- (b) Prior to 1927;
- (c) On February 23, 1928;
- (d) On May 31, 1928;
- (e) Since May 31, 1928.

#### RESPONSE TO REQUEST NO. 15:

Plaintiff has no knowledge of what its officers or members knew at any of the times specified prior to 1928. In more recent years, Plaintiff has certainly known of the existence of the line and has generally assumed the line was in service and use, and from time to time maintained by the Defendant. To this extent paragraph (e) is admitted.

#### REQUEST FOR ADMISSION NO. 16:

It would be unreasonable [sic; original REQUEST said "reasonable"] for Mountain Bell to believe, and Mountain Bell would be justified in believing that, after the order of dismissal dated May 31, 1928, in the lawsuit The United States of America, as Guardian of the Pueblo of Santa Ana, in the State of New Mexico, Plaintiff, versus, Charles F. Brown, et al, Defendants, Action No. 1814 in equity in the United States District Court, District of New Mexico, Mountain Bell had the right to maintain, use, service, and operate the telephone line across the lands claimed by the Plaintiff.

#### RESPONSE TO REQUEST NO. 16:

This Request is objected to on the grounds that it asks for a bare legal conclusion. To the extent that the Request may ask for opinions of fact or of the application of law to fact, it is denied.

#### REQUEST FOR ADMISSION NO. 17:

It would be unreasonable for Mountain Bell to believe, and Mountain Bell would be justified in believing



that, after the execution by Pueblo de Santa Ana and Mountain Bell, of the agreement dated April 13, 1928, and approval of that agreement by the Secretary of the Interior on April 13, 1928, Mountain Bell had the right to maintain, use, service and operate the telephone line across the property claimed by the Plaintiff.

#### RESPONSE TO REQUEST NO. 17:

This Request is objected to on the grounds that it asks for a bare legal conclusion. To the extent that the Request may ask for opinions of fact or of the application of law to fact, it is denied.

#### REQUEST FOR ADMISSIONS NO. 18:

The telephone line which is the subject of this suit served the Plaintiff, or its members, or occupants of lands owned by the Plaintiff.

#### RESPONSE TO REQUEST NO. 18:

Plaintiff has no knowledge as to what lands or persons are or may have been served by the line in question, and thus at the present time cannot admit or deny this Request. Plaintiff will, however, attempt to obtain this information through discovery from Defendant.

/s/ RICHARD W. HUGHES  
LUEBBEN, HUGHES & KELLY  
805 Tijeras, NW  
Albuquerque, NM 87102  
(505) 842-6123

Attorneys for Pueblo of Santa  
Ana, Plaintiff

Date: March 30, 1981

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## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

(Title Omitted in Printing)

### APPENDIX OF EXHIBITS

TO

### RESPONSE OF THE PUEBLO OF SANTA ANA TO MOUNTAIN BELL'S MOTION FOR PARTIAL SUMMARY JUDGMENT

(Filed February 1, 1982; docketed March 29, 1982)

#### EXHIBITS

Affidavit of Omar Bradley. February 1, 1982.

- Exhibit A — (Omitted in printing; can be found at J.A. 36.)
- Exhibit B — George A.H. Fraser to Milton Smith, Jr., March 10, 1928.
- Exhibit C — Milton Smith, Jr., to George A.H. Fraser, March 12, 1928.
- Exhibit D — Milton Smith, Jr., to George A.H. Fraser, May 23, 1928.
- Exhibit E — George A.H. Fraser to Milton Smith, Jr., May 31, 1928.
- Exhibit F — Milton Smith, Jr., to George A.H. Fraser, June 1, 1928.
- Exhibit G — Marshall's Return of Service, *U.S. v. Brown*.
- Exhibit H — Milton Smith, Jr., to J.A. Kelly, Sept. 2, 1927.
- Exhibit I — George A.H. Fraser to the United States Attorney General, November 4, 1925.
- Exhibit J — Application of Right-of-Way across Santa Ana Pueblo Grant, December 30, 1929, by Mountain States Tel. & Tel. Co.

(Title Omitted in Printing)

# AFFIDAVIT FOR AUTHENTICATING DOCUMENTS

My name is Omar Bradley. I am Agency Realty Officer for the Southern Pueblos Agency in the Bureau of Indian Affairs. My office has custody of the files of the Pueblo Lands Board and various other documents relating to the Pueblo Lands Act and the proceedings thereunder. I am familiar with those records and work with them in the ordinary course of business. Copies of documents from the Southern Pueblos Agency attached to Santa Ana Pueblo's brief as Exhibits B, C, D, E, F, G, and H are true and correct copies of the originals.

/s/ OMAR BRADLEY

STATE OF NEW MEXICO )  
 ) SS  
COUNTY OF BERNALILLO )

Subscribed and sworn to before me this 1st day of February, 1928, by Omar Bradley.

/s/ PEGGY L. BROWN WOLF  
Notary Public

My Commission Expires:

## EXHIBIT "B"

Santa Fe, New Mexico  
c/o Pueblo Lands Board  
March 10, 1928

Milton Smith, Jr.,  
Assistant General Counsel,  
Mountain States Tel. & Tel. Co.,  
Telephone Building,  
Denver, Colorado.

My dear Mr. Smith:

The Mountain States Company is one of the defendants in the suit of U. S. as Guardian of the Pueblo of Santa Ana vs. Brown et al. I am informed, however, that you have obtained a right of way deed from the Indians of this Pueblo and that it will be presently forwarded to Washington for approval. Please let me know if I am right in this, and if so, please inform me as soon as the transaction becomes complete.

I wish to take the bill pro confesso against various defendants who have not appeared, but will not do so as against your Company if satisfied that its title will presently be perfected. Please let me know what the situation is.

Very sincerely yours,

GAHF-S

Special Assistant  
to the Attorney General.

## EXHIBIT "C"

### THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY

Telephone Building  
Denver, Colorado

March 12, 1928.

MILTON SMITH  
Vice President and General Counsel

Mr. George A. H. Fraser,  
Special Assistant to the Attorney General,  
c/o Pueblo Lands Board,  
Santa Fe, New Mexico.

Dear Mr. Fraser:

With reference to your letter of March 10, concerning the suit of the United States as Guardian of the Pueblo of Santa Ana v. Brown, et al, I beg to advise that The Mountain States Telephone and Telegraph Company has obtained a right of way deed from the Indians of the Pueblo of Santa Ana, in the form of the other deeds which we have heretofore obtained from the various Pueblos. This deed is being forwarded to Washington for approval. I will be sure and let you know just as soon as such approval is received.

I thank you for your interest in the matter, and assure you that I very much appreciate it.

Yours truly,

/s/ MILTON SMITH  
Assistant General Counsel

MSJr/BLM

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EXHIBIT "D"

THE MOUNTAIN STATES TELEPHONES AND  
TELEGRAPH COMPANY

Telephone Building  
Denver, Colorado  
May 23, 1928.

MILTON SMITH  
Vice President and General Counsel

Mr. George A. H. Fraser,  
Special Assistant to  
the Attorney General,  
c/o Pueblo Lands Board,  
Santa Fe, New Mexico.

Dear Mr. Fraser:

This is to advise you that we have just received the agreements with the Pueblos of Santa Ana and San Felipe, approved by the Department of the Interior on April 13th, 1928. Two photostatic copies of each of these agreements are being forwarded to the Pueblo Lands Board this date.

I trust that with this information and with the filing of the agreement, the suit of the Pueblo de Santa Ana v. Brown may be dismissed as to The Mountain States Telephone and Telegraph Company. If you wish a stipulation signed by this Company, please advise me.

With kindest personal regards, I am,

Yours truly,

/s/ MILTON SMITH, JR.  
Assistant General Counsel.

MSJr/HY

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EXHIBIT "E"

Santa Fe, New Mexico  
May 31, 1928

Milton Smith, Jr., Esq.,  
Asst. Gen. Counsel,  
Mt. States Tel. & Tel. Co.,  
Denver, Colo.

Dear Mr. Smith:

Re: U.S. as Guardian of the  
Pueblo of Santa Ana v. Brown,  
et al.

Thank you for your letter of May 23rd informing me that your conveyance from the Pueblo of Santa Ana has



been approved by the Secretary of the Interior. I have pleasure in enclosing herewith copy of order of dismissal as against your company just entered by the federal court in this suit.

I also note that your San Felipe conveyance has been approved, and will, therefore, leave out your company from the suit which I am just bringing as to that pueblo.

With kindest regards, I am

Very sincerely yours,

Spec. Asst. to Attorney General.

---

EXHIBIT "F"

THE MOUNTAIN STATES TELEPHONE AND  
TELEGRAPH COMPANY

Telephone Building  
Denver, Colorado

Milton Smith  
Vice-President and General Counsel

June 1, 1928

Mr. George A. H. Fraser,  
Special Assistant to the Attorney General,  
Santa Fe, New Mexico.

Re: U. S. as Guardian of the  
Pueblo of Santa Ana v.  
Brown, et al.

Dear Mr. Fraser:

I acknowledge receipt of your letter of May 31 enclosing copy of order of dismissal against the telephone company in the above case, and wish to thank you for your trouble in this connection.

With kindest personal regards, I am

Yours very truly,

/s/ MILTON SMITH, JR.  
Assistant General Counsel.

MS:Jr:H

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EXHIBIT "G"

MARSHAL'S RETURN

UNITED STATES OF AMERICA)  
DISTRICT OF NEW MEXICO ) ss:

I, Joseph F. Tondre, United States Marshal for the District of New Mexico, hereby certify that the within writ came to hand on the 15th day of December A.D. 1927, and that same was duly executed by delivering to the within named defendants on the dates, at the places and in the manner mentioned in the list attached hereto, a true copy of the within writ, together with a copy of the complaint thereto attached at places indicated in list attached hereto in Sandoval County, State of New Mexico.

Form No. 282

RETURN ON SERVICE OF WRIT.

UNITED STATES OF AMERICA)  
DISTRICT OF NEW MEXICO ) ss:

I hereby certify and return that I served the annexed Subpoena in Chancery together with copy of the Complaint on the therein-named Rev. A. T. Daeger, Archbishop of Santa Fe, representing the Roman Catholic Church of New Mexico; The Western Union Telegraph Co., by serving

copy on J. B. Burns, Sty. Agent; The Mountain States Tel. & Tel. Co. by serving copy on G. J. Speechly, Sty. Agent and the Atchison Topeka and Santa Fe Railway Company, by serving copy on H. S. Lutz, Sty. Agent by handing to and leaving a true and correct copy thereof with them personally at Santa Fe in said District on the Fourteenth day of December, A.D. 1927.

JOSEPH F. TONDRE  
U. S. Marshal

By (Signed—Illegible)  
Deputy

29 Mrs. Juana Gallegos	J. N. Griego	do	do	2.00
28 Mrs. Genoveva Griego	Personally	do	do	2.00
29 Juan N. Griego	do	do	do	2.00
29 Remedios Baca	do	do	do	2.00
				<hr/>
				\$ 42.00

Equity

Case No. 1814

Copy to Mr. Frazer.

Date	Name	Served on	Place	County
Dec. 1927				
27	Chas. F. Brown	Personally	Bernalillo	Sandoval
27	Sostenes Jaramillo	do	Llinito	do
14	Rev. A. T. Daeger	do	Santa Fe	Santa Fe
29	Virginia Perea	C.F. Brown	Bernalillo	Sandoval
19	Carlota P. Otero	do	do	do
19	Barbara P. Yrisarri	do	do	do
14	The A. T. & S. F. Ry. Co.	H.S. Lutz, Agt.	Santa Fe	Santa Fe
14	Western Union Tel Co,	J.B. Burns, Agt.	do	do
27	Postal Tel-Cable Co,	J.S. Creegan, Agt,	Albuq.	Bernal.

14 Mt. Sts. T. & T. Co.	G.J. Speechly, Agt.	Santa Fe	Santa Fe
28 Maurico Montoya	Personally	Llanito	Sandoval
28 Francisquita Valdez	do	do	do
29 Julianita Valdez	do	do	do
29 Emilia Valdez	do	do	do
30 Manuel Gutierrez	do	do	do
30 Miguel Montoya	do	do	do
30 Onesimo Valdez	do	do	do
27 Porfilia Archibeque	do	do	do
27 Jesus Teofilo Valdez	P.Martinez	do	do
27 Francisco Griego	Personally	do	do
28 Diego Gutierrez	do	do	do
29 Mrs. Juana Gallegos	J.N. Griego	do	do
28 Mrs. Genoveva Griego	Personally	do	do
28 Juan N. Griego	do	do	do
30 Remedios Baca	do	do	do

# EXHIBIT "H"

## THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY TELEPHONE BUILDING DENVER, COLORADO

September 2, 1927.

MILTON SMITH  
Assistant General Counsel  
Mr. J. A. Kelly,  
State Plant Superintendent,  
The Mountain States Tel. & Tel. Co.,  
El Paso, Texas.

Dear Sir:

In 1924 a right of way was obtained from the United States Government across the Laguna and Acoma Pueblos.

The application for the right of way was made under the Act of March 4, 1911.

As you probably know, it has been held that applicants for rights of way under that Act acquired no rights of way across the Indian Pueblos in New Mexico.

I am now preparing agreements to be executed by the officers of the two pueblos above mentioned, and also an application to the Secretary of the Interior for his approval of those agreements. I wish to attach to the agreements blueprints showing the exact location of the line.

From the map prepared in 1924 for the old application the description across these pueblos is so connected that I cannot definitely separate the description pertaining to the Laguna Pueblo and the one pertaining to the Acoma Pueblo; also, on that map it appears that the line crosses what is known as Executive Order Lands. Presumably these last mentioned lands are not within the boundaries of the two pueblos.

Mr. J. A. Kelley—2

Will you please advise me whether the Executive Order Lands are included within the boundaries of the pueblos, and also whether they are a part of the lands owned by the pueblos.

Will you also please prepare and send me a description showing the route of our line across the Pueblo de Acoma and another description showing the route of our line across the Pueblo de Laguna.

Yours truly,  
/s/ Milton Smith, Jr.  
Assistant General Counsel.

MS.JR:H

EXHIBIT "I"

DEPARTMENT OF JUSTICE  
WASHINGTON, D.C.

ADDRESS REPLY TO  
"THE ATTORNEY GENERAL"  
AND REFER TO  
INITIALS AND NUMBER

BIF

No. 210663

Santa Fe, N. M. Nov. 4, 1925.

PUEBLO LANDS BOARD.

The Attorney General,

Washington, D.C.

Sir:

As a matter of information and record, I wish to follow up my last letter (undated, but written about October 30th) on the question of suits to quiet title and other matters arising under the Pueblo Lands Act of June 7, 1924. Also, you may wish to approve or disapprove my tentative views on the proper course to pursue.

1. As stated in that letter, I fear that, even if the objection of multifariousness is overruled, the suit to quiet title may be dismissed against any defendants who prove that they are in possession and raise the objection that a suit in equity deprives them of their constitutional right to a jury trial. If so, there will be tracts the Indian titles to which have been held by the Board to be unextinguished and of which defendants yet retain possession. If such cases occur, I judge that it will be the duty of the United



States under its general power of guardianship, apart from the Act, to bring separate suits in ejectment against such defendants.

Since the Act is mandatory in the matter of a suit to quiet title, I assume that that course must be tried first, whatever we may think as to its soundness.

In the case of Tesuque, it is possible that no defendants will raise the constitutional question, in spite of their announced intention to do so; but in the long run, it is hardly conceivable that this point will not be raised somewhere at some time.

2. I find that under local State practice, in suits to quiet title, it is universal to add to the defendants named "all unknown persons claiming any interest or title adverse to the plaintiff." This is authorized by early acts and by an amendatory act of 1925. Service is then had by publication. I am unable to find any Federal statute or

(2)

rule authorizing the inclusion of unknown persons as defendants, although there is a familiar statute providing for service by publication on defendants not found. While of course a State act cannot enlarge Federal equity jurisdiction, yet various Supreme Court cases say that the Federal Court may, if it please, enforce a right created by State law. Service by publication in English and Spanish for the statutory six weeks would probably cost about \$100.00. It is possible that there are persons not in possession and who have placed no deeds on record who yet have deeds from a Pueblo or some Mexican living thereon which might later form the basis of a claim. A very large number of the earlier deeds presented to the Board as color of title have never been recorded.

The question then is whether it is worth while to make "unknown persons" defendants and to incur the expense of service by publication, in view of the uncertainty whether this will do any good. Considering that this is the regular practice in New Mexico and that it apparently

effects a completeness otherwise wanting, I am inclined to follow it. Please give me your instructions as to this.

3. This same difficulty becomes acute in the case of the Pueblo at Jemez, where only three non-Indian claims were presented. I do not know how the Board will decide them, but having listened to the evidence would expect it to uphold them. If so, there would be no known claimants at all to the Indian lands title to which the Board finds unextinguished, and if the suit to quiet title is brought, the only possible defendants would be "unknown defendants." Yet, under the provisions of the Act, the suit is mandatory.

If this turns out to be the situation, I would be inclined to bring the suits against "unknown defendants" for what it may be worth.

4. But Jemez will probably produce still another complication. On July 11, 1924, the Secretary of the Interior approved an application of the Santa Fe & Northwestern Railway Company for a right-of-way across the Jemez Pueblo lands, a distance of about 14 miles (incidentally, a similar right-of-way was approved across two other Pueblo grants,—Zia and Santa Ana). This was in pursuance of surveys and negotiations beginning about July, 1921. The Indians were very loath to permit the railway to cross their grant, but were finally persuaded or gently forced to

(3)

do so. No court proceedings were had. An informal appraisal of damages was made by H. F. Robinson, Supervising Engineer, Indian Irrigation Service, Albuquerque, F. C. H. Livingston, then Special Attorney for the Pueblo Indians, Belen, and Louis R. McDonald, Agency Farmer, Jemez Pueblo, aggregating \$2,946.55. This amount was apportioned and distributed among the individual Indians whose lands were taken, or damaged, although part went to the Pueblo as an entity. The money was accepted, although apparently with some demur. Mr. Robinson, who is an experienced and conscientious man, assures me that the damages awarded were adequate. The whole matter was engineered by H. P. Marble, Superintendent of the

Southern Pueblos, Albuquerque, who recommended approval to the Commissioner of Indian Affairs, who, in turn, recommended it to the Secretary. The railway was originally a private carrier—a logging railway—but has recently been recognized as a common carrier by the Interstate Commerce Commission. It was constructed across the Pueblo during 1923 and 1924; probably had trains running in 1924, and is still in operation.

The Act by which it is attempted to justify all this is that of March 2, 1899, 30 Stat. L. 990, as amended June 25, 1910, 36 Stat. 859, Compiled Statutes, Sec. 4181. This authorizes, under certain conditions,

“A right-of-way for a railway, telegraph, and telephone line through any Indian Reservation in any State or Territory, or through any lands held by an Indian tribe or nation in Indian Territory, or through any lands reserved for an Indian Agency or for other purposes in connection with the Indian service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation.”

The only possible portion of the above which could authorize the allowance of this right-of-way is the expression “through any lands held by an Indian tribe or nation in Indian Territory.” But Sections 22 and 23 of an Act of Feb. 28, 1902, 32 Stat. 50, repealing the above Act insofar as it applies to Indian Territory and Oklahoma, make clear to my mind that the expression “Indian Territory” means the territory now embraced in the state of Okla-

(4)

homa and not Indian territory in general. The statute relied on, therefore, seems to me to furnish no justification for the grant or approval of this right-of-way over lands owned in fee by the Pueblo. This view is emphasized by Section 17 of the Pueblo Lands Act of June 7, 1924, reading in part:

“No right, title or interest, in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined, shall hereafter be acquired or initiated by virtue of the laws of the State of New Mexico, or in any other manner except as may hereafter be provided by Congress.”

This was passed prior to the Secretary's approval. If the foregoing is correct, the railway is a trespasser, and indeed could only have acquired a right-of-way by special act of Congress in view of Section 2, paragraph 2, of the New Mexico Enabling Act, whereby the Pueblo lands are declared to be “subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States.”

The Railway Company did not present its claim to the Board, which informally advises me that it intends to return the land over which the railway passes, as Indian land the title to which has not been extinguished.

The question will then be squarely presented as to what course we must take. Section 3 of the Pueblo Lands Act requires a suit to quiet title to all Indian lands so returned, but, as above stated, the only known defendant so far will probably be this Railway Company, which is unmistakably in possession, so that a suit to quiet title will not lie. By the weight of authority, ejectment will lie against a railway which has come on a man's land as a trespasser; but as a practical matter it is impossible to get rid of a Railway once in operation, and a court would go far to defeat such action in a case like this, where development of the State is promoted and influential local interests are involved.

(5)

An action in trespass for damages will also lie, and in this case the amounts actually paid the Indians could be counterclaimed. If they were adequate, plaintiff would have no recovery.



Although satisfied that the Appraisers acted in good faith and believed the award to be adequate, I doubt if it is really so for this reason: In the way these people live, two or three acres will support a family all their lives. An award of \$300 or \$450, producing a theoretical income of \$18.00 or \$27.00 a year, is obviously a totally inadequate equivalent.

After much reflection, I recommend two proceedings in Jemez, in case the situation develops as hereinabove indicated.

- (a) A suit to quiet title against all unknown defendants.
- (b) An action in trespass against the Railway Company, in which we may hope to recover some additional damages.

While one is reluctant to criticize the course of the Department of the Interior, it seems to me that if the land over which the Railway runs is returned by the Board as Indian land with unextinguished title, the Lands Board Act leaves no alternative but to sue. This is especially appropriate where the Department has acted without any opinion from the Attorney General and apparently without authority of law.

5. There will be still another difficulty at Jemez. On September 28, 1878, an agreement was made between the Governor and Principales of Jemez and B. M. Thomas, then Indian Agent, reading as follows:

"It is hereby agreed by and between the Pueblo of Jemez, represented by the Governor and officers and principals thereof, on the one part; and B. M. Thomas, U.S. Indian Agent on the other part, that a certain piece of land situated at the northeast side of the Pueblo of Jemez, extending from the house now being built thereupon, for Mission and School purposes, distances and directions herein described, viz: To the north seventy-five yards; to the east thirty-five yards; to the south seven yards; to the west ten yards; be and hereby is devoted to school purposes

for the benefit of said Pueblo, so long as the parties

(6)

building the house shall maintain a school upon said premises for the benefit of said Pueblo.

"In testimony whereof we, the parties of both parts, hereby sign our names at the Pueblo of Jemez this twenty-eighth day of September, one thousand eight hundred and seventy-eight."

(Signed by the Governor and 12 other officials and Ben M. Thomas, U.S. Indian Agent.)

Although no mention is made of the real party in interest, this agreement was for the use of the Presbyterian Mission, which proceeded to construct a building on the premises described. I am told that it might cost \$1500 to \$2000 at present prices to reproduce it.

This agreement is not a lease and may probably be classified as a license to occupy the land. The Mission presented no claim to the Board, which therefore took no official cognizance of the situation and will probably return the land in question as Indian land the title to which is not extinguished. Since the Act requires suit to quiet title to such land, at first glance it would appear that the Mission should be made a defendant; but it is obviously in possession and therefore a suit to quiet title is not appropriate, at least if objection on that ground is made. Further, insofar as the above agreement has any legal effect, it shows that the Mission's possession is not adverse, for which reason also a suit to quiet title is inappropriate.

Probably the Mission is technically maintaining a school, as the agreement provides, since it has the building with a person ready and willing to teach. In fact, however there is not a single pupil in attendance, nor has there been for a long time back, and the Indians, or some of them, would like to have the land, and more especially the building.



After attempting to balance the facts, my opinion is that the Mission should not be made a party to the suit to quiet title, nor otherwise sued, because its possession is not adverse. If the Indians are dissatisfied with the situation, they should first give notice to the Mission of the termination of the license, and then proceed, independently, or ask their official attorney, to proceed to recover possession in any appropriate way. If you disagree with the foregoing, please inform me.

(7)

6. You are aware from this and previous letters that the Lands Board Act is a well meaning but ill constructed measure which develops difficulties at every step. Mr. Jennings intends to submit to you before long an amendment to Section 2, designed to clarify the financial situation, and naturally the desirability of amending the Act in various other particulars has been under discussion. There seems to be much hesitation, however, in suggesting any change to Congress because the difficulty of procuring the passage of the Act in its present shape was so great that there is fear lest it be emasculated if the attention of Congress is again directed to it.

So far as the suit to quiet title goes, it is doubtless desirable to try out the working of this requirement before suggesting any change. There is, however, one matter which seems to me of immediate importance. The valuation report required by Section 6 is given the effect of a judicial finding and final judgment. The primary report required by Section 2, which separates the Indian from the non-Indian lands, is not expressly given any weight whatever, although it is the most important of the four reports provided for. So far as the Act shows, its only effect is to describe the Indian land which is to be the subject of the suit to quiet title and in a way to designate the defendants in such suit, or some of them. I think at least that this report should be prima facie evidence in the suit of the matters and things therein decided, and I also think that it should be permissible to introduce in the suit the evidence taken before the Board, or any part of it, subject, of course, to be rebutted or supplemented by

other evidence. If you agree with me in this, I will be glad to submit a draft of a proposed amendment to Section 3 along these lines.

Respectfully,

/s/ George A. H. Fraser,  
Special Assistant to the Attorney General.

GAHF-S

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EXHIBIT "J"

HONORABLE SECRETARY OF THE INTERIOR,

Washington, D.C.

APPLICATION FOR RIGHT OF WAY  
FOR THE TELEPHONE AND TELEGRAPH  
LINE THROUGH THE SANTA ANA  
PUEBLO GRANT, NEW MEXICO.

Dear Sir:

The Mountain States Telephone and Telegraph Company, corporation duly organized under and existing by virtue of the laws of the State of Colorado and authorized to do business in the State of New Mexico, hereby applies for a grant of right of way to The Mountain States Telephone and Telegraph Company, its successors and assigns, for a telephone and telegraph line over, through and under lands in the Santa Ana Pueblo Grant, State of New Mexico, as follows:

Beginning on the South boundary of the Santa Ana Pueblo Grant at a point bearing North 89° 49' East, 215.2 feet from mile post 1½, set by the General Land Office Resurvey of 1915, in Section 5, Township 13 North, Range 3 East New Mexico Principal Meridian; thence in a general Northwesterly direction across the Santa Ana Pueblo Grant to the West boundary of said

Grant, from which point the  $3\frac{1}{2}$  mile post bears South  $0^{\circ} 7'$  East 293.4 feet; being a total distance of 4.43 miles;

said right of way being more particularly described in the map and field notes hereto attached.

This application is made pursuant to the provisions of Section 3 of the Act of March 3, 1901, (31 Statutes at large, 1058-1083) and the Act of April 21, 1928, (Chapter 400, 45 Statutes at Large, Page 442) and in pursuance of the regulations of the Department.

The following documents are hereto attached and made a part of this application:

Exhibit A—Map showing the line of route of the said right of way, inscribed upon which is an affidavit of Mr. F. A. Cannon, Superintendent of Rights of Way, to the effect that the survey of said right of way was made under his direction and is accurately represented on said map, and there is also inscribed upon said map a statement by the Company's General Plant Manager and attested by the Secretary under the Company's seal, showing the authority of the said Superintendent of Rights of Way to make the survey, and certifying also to the accuracy of said map and the purposes thereof.

Exhibit B—Copy of the field notes and survey upon which said map is based.

Exhibit C—Affidavit of the applicant's General Plant Manager under the seal of the Company,

showing the names and designations of its officers at this date.

Exhibit D—Certified copy of a resolution of the Board of Directors authorizing the General Plant Manager of said Company to execute on behalf of the said Company applications for rights of way.

Exhibit E—Certificate of the General Plant Manager of the applicant Company to the effect that the organization of said Company has been completed and that the said Company is fully authorized to proceed with the construction and maintenance of the said telephone and telegraph line above referred to and that a copy of the articles of incorporation of said Company has heretofore been filed with the Department of the Interior and that no changes have been made therein since the said filing.

The Mountain States Telephone and Telegraph Company further states that copies of its articles of incorporation have heretofore been forwarded to the Department of the Interior and that a certificate of the Corporation Commission of the State of New Mexico, showing that the applicant Company has complied with all of the laws of that state relating to or governing foreign corporations, has heretofore been filed in connection with an application for right of way across the Las Cruces Land District, in the State of New Mexico, which application was dated May 29, 1929, and that the certificate of the Secretary of State of the State of Colorado to the effect that the articles of incorporation of The Mountain States Telephone and Telegraph Company were filed in his office according to law

on the 17th day of July, 1911, has already been transmitted to the Secretary of the Interior in connection with applications for rights of way across the Phoenix Land District and in connection with applications for rights of way over other public lands in its jurisdiction, and that the certificate of the Secretary of State of the State of Colorado to the effect that no change has been made in the corporation laws of the State of Colorado since the session of the Twenty-seventh General Assembly of the State of Colorado which convened in the City and County of Denver on the second day of January, A.D. 1929, and that certified copies of all of the acts passed by said session have been heretofore forwarded by the Secretary of State of the State of Colorado to the General Land Office of the United States at Washington, D.C., the same completing the statutes of the State of Colorado in relation to corporations now in force in this state, have heretofore been submitted to the Secretary of the Interior in connection with applications for rights of way across other lands within his jurisdiction and are now on file in his department, reference being particularly made to an application for right of way for telephone and telegraph line through the Evans-ton Land District, State of Wyoming.

The Mountain States Telephone and Telegraph Company further states that it intends in good faith to construct, maintain and operate a telephone and telegraph line along the right of way hereby applied for and respectfully requests that said right of way be granted in accordance with this application.

Dated at Denver, Colorado, this 30th day of December, A.D. 1929.

THE MOUNTAIN STATES TELEPHONE  
AND TELEGRAPH COMPANY,

By N. O. Pierce  
Its General Plant Manager

Attest:

A. R. Grosheider  
Secretary.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

No. 80-841-M Civil

PUEBLO OF SANTA ANA,  
Plaintiff,

vs.

MOUNTAIN STATES TELEPHONE  
AND TELEGRAPH COMPANY,  
Defendant.

MEMORANDUM OPINION  
AND  
ORDER

(Filed June 2, 1982)

This matter arises on cross motions for summary judgment by defendant, Mountain States Telephone and Telegraph Co., (Telephone) and plaintiff Pueblo of Santa Ana (Pueblo). The parties agree and I find that there are no material issues of fact as to the issues presented. The plaintiff is entitled to judgment as a matter of law as to those issues.

The Pueblo seeks damages from the defendant for a trespass which began in 1907 and has continued to the present. The trespass is a telephone and telegraph line constructed by defendant's predecessor across lands held



by the Pueblo in fee simple but subject to federal restraints against alienation. Telephone argues it obtained a valid right of way across the Pueblo's land in 1928 pursuant to § 17 of the Pueblo Lands Act of June 7, 1924. 43 Stat. 636. Telephone also argues plaintiff's claims are barred by the judgment in *United States as Guardian of the Pueblo of Santa Ana v. Brown*, No. 1814 Equity (D. N.M. 1928). The issues presented are: (1) Did Congress, in § 17 of the Pueblo Lands Act, intend to grant to the Pueblos of New Mexico authority to alienate their land? (2) Are Santa Ana's claims barred by the judgment in *U. S. v. Brown*?

#### THE PUEBLO LANDS ACT

Section 17 of the Pueblo Lands Act provides:

No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as herein before determined shall hereafter be acquired or initiated by virtue of the laws of the State of New Mexico, or in any other manner except as may hereafter be provided by Congress, and no sale, grant, lease of any character, or other conveyance of lands, or any title or claim thereto, made by any Pueblo as a community, or any Pueblo Indian living in a community of Pueblo Indians, in the State of New Mexico, shall be of any validity in law or in equity and unless they be first approved by the Secretary of Interior.

It is not disputed that the Secretary, on April 12, 1928, approved the right of way granted to Telephone by the Pueblo. Pueblo argues, however, that Telephone could not obtain a valid right of way pursuant to § 17 because § 17 was an extension of the Indian Non-Intercourse Act to the Pueblos of New Mexico, and not a grant of authority to the Pueblos and the Secretary to alienate Pueblo lands. Pueblo maintains § 17's prohibition against the

alienation of Pueblo lands except as Congress may provide in the future and its requirement of Secretarial approval closely parallels and was intended to extend to the Pueblos the Non-Intercourse Act's requirement of a treaty or convention negotiated by an officer of the United States to alienate Indian lands. Acts of June 30, 1834, 4 Stat. 730 § 12, (codified at 25 U.S.C. 177), and February 27, 1851, 9 Stat. 587. Telephone argues the first clause of § 17 refers to condemnation or other similar takings which Congress may authorize in the future and the second clause was intended by Congress to allow grants of Pueblo lands by the Pueblos so long as the approval of the Secretary was first obtained. A brief discussion of the circumstances surrounding the enactment of the Pueblo Lands Act is necessary to an understanding of the issue.

The Pueblo Lands Act was a congressional response to the confusion created by the Supreme Court's conflicting decisions in *U.S. v. Joseph*, 94 U.S. 614 (1876); *U.S. v. Sandoval*, 231 U.S. 28 (1913); and *U.S. v. Candelaria*, 271 U.S. 432 (1925). In *Joseph*, the issue was whether the Pueblos of the Rio Grande Valley of New Mexico were afforded protections under the Indian Non-Intercourse Acts. Acts of June 30, 1834, 4 Stat. 730, § 12 and February 27, 1851, 9 Stat. 587. The Act of June 30, 1834, among other things, forbade the transfer of Indian lands unless the grant "be made by treaty or convention entered into pursuant to the Constitution." Section 12 also requires that the treaty or convention be negotiated by an officer of the United States. The Act of February 27, 1851 extended the protections of the June 30, 1834 Act to the Indian Tribes of the newly acquired Territory of New Mexico. However, the Court in *Joseph* held the Acts did not apply

to the Pueblos of New Mexico because, unlike other Indian Tribes, Pueblo lands was owned in fee simple and also because the Pueblo Indians were sophisticated such that federal protections were not required. After the decision in *Joseph*, the United States made no effort to prevent encroachment on Pueblo lands.

However, the Court again had the opportunity to consider the status of the Pueblos in *Sandoval* and *Candelaria*. In *Sandoval* the Court held that the Pueblo Indians were ethnically and historically "Indians" and that Congress had the power to define them as such in the New Mexico Statehood Enabling Act of June 20, 1910. 36 Stat. 557. In *Candelaria*, a quiet title action, the Court was again presented with the question of the applicability of the Indian Non-Intercourse Acts to the Pueblos. Acts of June 30, 1834 and February 27, 1851. In holding that the Pueblos were afforded the protections of the Non-Intercourse Acts, the Court stated,

"While there is no express reference in the provision (the provision prohibiting settlement on Indian Lands in the Act of 1834) to Pueblo Indians, we think it must be taken as including them. They are plainly within its spirit and, in our opinion, fairly within its words, 'any tribe of Indians.' Although, sedentary, industrious and disposed to peace, they are Indians in race, custom and domestic government, always have lived in isolated communities, and are a simple, uninformed people, ill-prepared to cope with the intelligence and greed of others." 271 U.S. at 442.

The decision in *Candelaria* created uncertainty in New Mexico for those who had settled on Pueblo lands between the time of the decisions in *Joseph* and *Candelaria*. In *Candelaria*, the Court held that the Pueblos were protected by the Non-Intercourse Acts and had been since the Acts were extended to the Pueblos of New Mexico in

1851. Therefore, those who had settled on Pueblo lands in good faith since 1851, were in violation of the Non-Intercourse Acts. The Pueblo Lands Act was Congress' response to this dilemma.

The Act created the Pueblo Lands Board and charged it with the responsibility of investigating title to Pueblo lands and filing actions in Federal District Court to recover certain lands of the Pueblos. Section 3. Other Pueblo lands, where the settlers could establish title under state or territorial law or where they could comply with the statute of limitations contained in Section 4 of the Pueblo Lands Act, were to be awarded to the settlers. Section 5. The Pueblos were to be compensated for property lost to the non-Indian settlers. Section 6.

In the Pueblo Lands Act, Congress was attempting to work an equitable solution to the thorny problem created by uncertainty as to the status of the Pueblo Indians. I am convinced that Congress was also, in § 17, reaffirming through congressional enactment what the Supreme Court decided in *Candelaria*: The Pueblos are Indians and wards of the federal government and Congress intended they be afforded the protections of the Indian Non-Intercourse Acts.

The Tenth Circuit reached a similar conclusion in *Plains Elec. Gen. and Tr. Co-Op v. Pueblo of Laguna*, 542 F.2d 1375, 1381 (10th Cir. 1976). In *Plains*, the issue was whether Congress had repealed, by implication, a general Pueblo land condemnation statute by its subsequent enactment of a specific, comprehensive scheme for the acquisition of rights of way across Pueblo lands. In holding there had been a repeal, the Court stated,



The history of these statutes (26 U.S.C. §§ 311-328; statutes providing for the acquisition of rights of way across Pueblo lands) reflects an effort to overcome the problems caused by the unique nature of Pueblo Indian land holdings and to provide them with the same protections given the lands of other Indians. The United States Supreme Court has held that Pueblo lands are subject to such protection, *United States v. Candelaria*, [271 U.S. 432 (1925)] and *United States v. Sandoval*, [231 U.S. 28 (1913)], and the intent of Congress to provide such protection cannot be doubted.

Accordingly, I will determine whether Congress intended § 17 to grant to the Pueblos authority to alienate their lands with Secretarial approval, by determining whether such a grant of authority is consistent with the Indian Non-Intercourse Acts, and federal Indian policy generally.

The Constitution rests the power to deal with Indian tribes in the Congress. Included in that power is the exclusive right to extinguish Indian titles. Act of June 30, 1834, 4 Stat. 730; *U. S. v. Santa Fe Pacific Rlwy Co.*, 314 U.S. 339, 347 (1941). Congress' intent to authorize alienation of Indian lands must be clear and express. *Chippewa v. U.S.*, 307 U.S. 1 (1939). Doubtful expressions of congressional intent to authorize alienation of Indian land must be resolved in favor "[of the Indian . . . who is] wholly dependent on its [the federal government's] protection and good faith." *U.S. v. Santa Fe Pacific Rlwy Co.*, at 354. Although Congress may delegate its power, the unilateral action of an officer of the Executive Branch cannot alienate land. Whether Congress intended to delegate its authority to alienate Indian lands must be determined against the "strong background of maintenance of congressional control." *Turtle Mountain Band of Chippewa Indians v. U.S.*, 490 F.2d 935, 946 (Ct. Claims 1974).

By the terms of § 17 of the Pueblo Lands Act, there is no authorization for the grant or sale of Pueblo lands. Although such authorization might be inferred from the Section's requirement of Secretarial approval, I decline to do so. The claimed authorization is not clear and express. Furthermore, it would be anomalous to conclude that Congress, having expressed its intention to afford the Pueblos the protection of other Indians, abandoned its objective and completely delegated its authority to the Secretary, with no restrictions, unlike other Indian Tribes. Such irrationality and arbitrariness should not be attributed to the Congress that was attempting to solve the problems created by the Supreme Court's erroneous decision in *Joseph*. See *Morton v. Mancari*, 417 U.S. 535, 548 (1974).

The construction of § 17 offered by the Pueblo is certainly more reasonable. The Secretary has adopted the construction offered by the Pueblo. 25 C.F.R. 121.22 provides:

Tribal Lands. Lands held in trust by the United States for an Indian Tribe. Lands owned by a tribe with federal restrictions against alienation and any other land owned by an Indian Tribe may only be conveyed where specific statutory authority exists and then only with the approval of the Secretary unless the act of Congress authorizing sale provides that approval is unnecessary. (See 25 U.S.C. 177 [Act of June 30, 1834]).

Although the Secretary has not always construed the Act of June 30, 1834 and § 17 of the Pueblo Lands Act to require congressional authorization (apart from § 17) and the approval of the Secretary, as evidenced by the



Secretary's approval of the right of way at issue in this case, the Secretary's differing constructions of § 17 illustrates my conclusion that § 17 was not a clear and express grant of authority to the Secretary and the Pueblos to alienate Pueblo lands.

RES JUDICATA  
AND  
COLLATERAL ESTOPPEL

Telephone also argues Pueblo's claim from 1928 to the present is barred by the judgment in *U.S. v. Brown*, No. 1814 Equity (D.N.M. 1928). *Brown* was brought by the United States as guardian of the Pueblo pursuant to § 4 of the Pueblo Lands Act to quiet title to Santa Ana Pueblo lands. In the course of the suit, before Telephone filed its answer, the United States moved to dismiss Telephone on the ground that Telephone had obtained a valid right of way, the right of way at issue here. Dismissal was ordered the day the motion was filed and the order of dismissal did not state whether the dismissal was with or without prejudice. The dismissal is, therefore, without prejudice. Fed.R.Civ.P. 41; *Homeowners' Loan Corp. v. Huffman*, 134 F.2d 314, 317 (8th Cir. 1943).

Telephone argues that Pueblo's claims from 1928 are *res judicata* and that the Pueblo is collaterally estopped from relitigating the validity of the right of way at issue in this case. A final judgment on the merits is essential in order for an action to be *res judicata*. For collateral estoppel to apply, the factual issue must have been actually litigated and necessarily decided. Wright, Miller and Cooper, *Federal Practice and Procedure Jurisdiction* § 4406 at p. 45; *Craft v. Choate*, No. 81-1893 (10th Cir. Slip Opinion, April 5, 1982). There was no judgment on

the merits in *Brown* and the validity of Telephone's right of way was not actually litigated or necessarily decided.

Telephone concedes that it was dismissed from the suit on the pretrial motion of the United States, but it maintains that the dismissal should be afforded the status of a judgment on the merits because of the Court's observation in the order of dismissal that "it appear[ed] to the court that since the institution of this suit, said defendant has secured good and sufficient title to the right of way and premises in controversy herein between plaintiff and said defendant by deed from the Pueblo of Santa Ana approved April 13, 1928 by the Secretary of Interior in accordance with the provisions of § 17 of the Pueblo Lands Act of June 7, 1924."

I am not convinced that the court's observation as to the reasons the United States moved for dismissal should elevate the order of dismissal to the status of an order on the merits. Substance must govern over form. The order of dismissal in *Brown* was not an order on the merits and the issue of the validity of Telephone's right of way was not actually litigated and necessarily decided. It is not uncommon for a court to state in its order of dismissal the reason plaintiff moved for the dismissal. Plaintiff's claims are not *res judicata* and the factual issues present in those claims are not precluded by collateral estoppel.

In conclusion, § 7 of the Pueblo Lands Act was intended by Congress to reaffirm the protections afforded the Pueblos under the Acts of June 30, 1834 and February 27, 1851. It was not intended to grant to the Pueblos and the Secretary *carte blanc* to alienate Pueblo lands for any reason. Plaintiffs claims are not barred by the judg-

ment in *U.S. v. Brown*. The Pueblo shall recover damages from April 13, 1928 to the date the defendant's telephone and telegraph line was removed. Plaintiff's prayer for punitive damages is denied.

/s/ E. L. Mechem  
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

(Title omitted in printing)

ORDER  
(Filed July 13, 1982)

This matter arises for consideration on defendant's motion to certify an interlocutory appeal of my order of June 2, 1982, pursuant to 28 U.S.C. 1292(b) (1976). Having considered the motion and being otherwise advised in the premises, I find that the issue determined in that order involves a controlling question of law as to which there is substantial ground for difference of opinion. I further find that an immediate appeal may materially advance the ultimate termination of the litigation. Now, Therefore,

IT IS ORDERED that defendant is hereby granted an interlocutory appeal from my order of June 2, 1982 pursuant to 28 U.S.C. 1292(b) (1976).

/s/ E. L. Mechem  
UNITED STATES DISTRICT JUDGE

---

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

NOVEMBER TERM —January 28, 1983  
Before Honorable Robert H. McWilliams, Honorable Jean S. Breitenstein and Honorable James K. Logan, Circuit Judges

Misc. No. 82-8041

MOUNTAIN STATES TELEPHONE  
AND TELEGRAPH COMPANY,

Petitioners,

vs.

PUEBLO OF SANTA ANA,

Respondent.

This matter comes on for consideration of the petition of Mountain States Telephone and Telegraph Company for permission to appeal an order of the United States District Court for the District of New Mexico, which was filed on June 2, 1982, and entered on June 3, 1982, and which order was amended by further order of the District Court filed July 13, 1982, and entered on July 14, 1982, in Civil Action No. 80-841-M.

Upon consideration whereof, it is ordered that the petition for permission to appeal is granted.

HOWARD K. PHILLIPS, Clerk

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UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

SLIP OPINION  
PUBLISH

UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT

No. 83-1220

PUEBLO OF SANTA ANA,

*Plaintiff-Appellee,*

vs.

THE MOUNTAIN STATES TELEPHONE AND  
TELEGRAPH COMPANY

*Defendant-Appellant.*

THE ATCHISON, TOPEKA & SANTA FE  
RAILWAY COMPANY,

*Amicus Curiae*

PUEBLO DE ACOMA,

*Amicus Curiae*

PUBLIC SERVICE COMPANY OF NEW MEXICO,  
*Amicus Curiae*

APPEAL FROM THE UNITED STATES  
DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

(D.C. No. 80-841-M Civ.)

(Filed May 14, 1984)

Scott E. Borg of Luebben & Hughes, Albuquerque, New Mexico, for Plaintiff-Appellee.

Kathryn Marie Krause, Denver, Colorado (Stuart S. Gunckel, Denver, Colorado, with her on the brief) for Defendant-Appellant.

Gary Crosby, Santa Fe Industries, Inc., Chicago, Illinois and John R. Cooney, Lynn H. Slade, John S. Thal and Walter E. Stern, III of Modrall, Sperling, Roehl, Harris & Sisk, P.A., Albuquerque, New Mexico, filed briefs on behalf of Amicus Curiae The Atchison, Topeka & Santa Fe Railway Company. Public Service Company of New Mexico joined in the Amicus Briefs of The Atchison, Topeka & Santa Fe Railway Company.

Arturo G. Ortego of Ortega & Snead, P.A., Albuquerque, New Mexico and Peter C. Chestnut of Albuquerque, New Mexico, filed a brief on behalf of Amicus Curiae of Pueblo de Acoma.

Before McWILLIAMS BREITENSTEIN and LOGAN,  
Circuit Judges.

BREITENSTEIN, Circuit Judge.

This is an interlocutory appeal from the United States District Court for the District of New Mexico which we permitted to be filed. The court granted partial summary judgment to the plaintiff-appellee, Pueblo of Santa Ana, and against the defendant-appellant, Mountain States Telephone and Telegraph Company, Mountain Bell. The dispute involves a right of way for a telephone and telegraph line across Pueblo lands. The trial court held in favor of the Pueblo and Mountain Bell appeals. We affirm.

The Pueblo was the owner of a tract of land situated in New Mexico which was a part of the El Ranchito Grant. In November, 1927, the United States pursuant to the



Pueblo Lands Act, 43 Stat. 636, filed an action in the federal district court for the district of New Mexico entitled *United States as Guardian of the Pueblo of Santa Ana v. Brown*, No. 1814 Equity (D.N.M. 1928), seeking to quiet title to this tract in the Pueblo. Mountain Bell was party to that suit. During the course of that litigation, the Pueblo entered into a right-of-way agreement with Mountain Bell, dated February 23, 1928, granting an easement to construct, maintain, and operate a telephone and telegraph line, the same line that is in controversy here. Acting pursuant to § 17 of the Pueblo Lands Act of June 7, 1924, 43 Stat. 636, 641-642, the Secretary of the Interior approved the agreement. The United States then moved to have Mountain Bell dismissed from the action on the ground that it had obtained title to the right of way through the easement agreement. In granting this motion, the court noted that it appeared "that since the institution of this suit said defendant has secured good and sufficient title to the right of way and premises in controversy. . . ."

In the present action Mountain Bell argues that it obtained a valid right of way across the Pueblo's land in 1928 and under § 17 of the Pueblo Lands Act of June 7, 1924, 43 Stat. 636. It argues further that the Pueblo's claims are barred by the 1928 dismissal of the case involving the same parties and issues. On these grounds, Mountain Bell moved for summary judgment that no trespass existed from 1928 to the present. The district court held, however, that § 17 did not authorize conveyance of lands by the Pueblo with the approval of the Secretary. The district court accepted the Pueblo's argument that § 17 was intended as a prohibition against the alienation of Pueblo lands except as Congress may provide in the fu-

ture. Its requirements of Congressional authorization and Secretarial approval paralleled and were intended to extend to the Pueblo the Nonintercourse Act's requirement of a treaty or convention entered into pursuant to the Constitution. See Acts of June 30, 1834, 4 Stat. 729, 730 § 12 (codified at 25 U.S.C. § 177), and February 27, 1851, 9 Stat. 574, 587 § 7. The court further held that the Pueblo's claims were not barred by the 1928 dismissal order because that order did not constitute a final judgment.

Section 17 of the Pueblo Lands Act provides:

"No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined shall hereafter be acquired or initiated by virtue of the laws of the State of New Mexico, *or in any other manner except as may hereafter be provided by Congress*, and no sale, grant, lease of any character, or other conveyance of lands, or any title or claim thereto, made by any Pueblo as a community, or any Pueblo Indian living in a community of Pueblo Indians, in the State of New Mexico, shall be of any validity in law or in equity *unless the same be first approved by the Secretary of the Interior.*" [Emphasis supplied.]

Mountain Bell challenges the argument of the Pueblo, upheld by the trial court, that § 17 was intended as an extension to the Pueblos of the Nonintercourse Act, in prohibiting alienation of Pueblo lands except as Congress may provide in the future and as approved by the Secretary. Mountain Bell argues that the first clause of § 17 requires Congressional approval for condemnations and other similar takings of Pueblo lands and that the second clause authorizes a Pueblo to alienate its lands if it obtains Secretarial approval. Analysis of these arguments requires an examination of the language, the historical back-

ground, the legislative history, and the administrative history of the Act.

The Nonintercourse Act required a treaty or convention to alienate Indian lands, Act of June 30, 1834, 4 Stat. 729, 730 § 12 (codified at 25 U.S.C. § 177). The Act of February 27, 1851, 9 Stat. 574, 587 § 7, extended all laws then in force regulating trade and intercourse with the Indian tribes to include Indian tribes in the Territory of New Mexico.

In *State of New Mexico v. Aamodt*, 10 Cir., 537 F.2d 1102, cert. denied 429 U.S. 1121, a water rights case, we reviewed the historical background of the controversy, pp. 1105 and 1109, and pointed out, p. 1105, that the efforts of federal officials to protect the Pueblos' property were frustrated by the New Mexico territorial courts which held that the Pueblos were outside the protection of federal laws. This rationale was upheld by the Supreme Court in *United States v. Joseph*, 94 U.S. 614.

We noted, at p. 1105, that the 1910 New Mexico Enabling Act, 36 Stat. 557, 558-559, defined "Indian country" to include "all lands now owned or occupied by the Pueblo Indians" and stated that such lands are "under the absolute jurisdiction and control of the Congress of the United States." The constitutionality of this provision was upheld in *United States v. Sandoval*, 231 U.S. 28, which specifically overruled *United States v. Joseph*. The Court said, *Id.* at 39, that,

"The people of the pueblos, although sedentary rather than nomadic in their inclinations, and disposed to peace and industry, are nevertheless Indians in race, customs, and domestic government."

The Court noted that the United States has treated the pueblos "as requiring special consideration and protection, like other Indian communities." *Id.*

Because in the *Joseph* decision the Supreme Court decided that the Pueblo lands were not subject to the protective laws earlier passed by Congress, non-Indians were free to acquire Pueblo lands. The validity of titles so acquired became questionable when in *Sandoval* the Court held that the protective federal statutes did apply and presumably always had applied. Congress responded with the passage in 1924 of the Pueblo Lands Act, 43 Stat. 636. The Act established a "Pueblo Lands Board" to investigate the Pueblo lands and determine those cases in which the Indian title should be extinguished. The United States as guardian of the Pueblos was required to institute quiet title actions to settle adverse claims to Pueblo lands. Non-Indians claiming title could plead adverse possession and the statute of limitations, defenses not ordinarily available against the United States.

In 1926, the Court in *United States v. Candelaria*, 271 U.S. 432, reaffirmed *Sandoval*. In so doing, it said after referring to the 1834 and 1851 acts, p. 441:

"While there is no express reference in the provision to the Pueblo Indians, we think it must be taken as including them. They are plainly within its spirit and, in our opinion, fairly within its words, 'any tribe of Indians.'"

We echoed this language, noting the application of the Nonintercourse Act to the Pueblo Indians in *Aamodt*, *supra.* In *Plains Elec. Gen. & Tr. Co-op v. Pueblo of Laguna*, 10 Cir., 542 F.2d 1375, 1376, we cited *Candelaria* as authority for the statement that "Lands of the Pueblos



cannot be alienated without the consent of the United States." In *United States v. University of New Mexico*, No. 83-1238, 10 Cir. opinion filed April 9, 1984, we noted that Congress extended the Nonintercourse Act to the Pueblos in 1851 and said that § 17 of the Pueblo Lands Act of 1924 "reaffirmed that the Pueblos and their lands were fully under the guardianship of Congress and the protection of the Nonintercourse Act." Slip Op. at 7. In so doing we noted the following statement in *United States v. Chavez*, 290 U.S. 357, 362:

"[T]he status of the Indians of the several Pueblos in New Mexico is that of dependent Indian tribes under the guardianship of the United States and that by reason of this status they and their lands are subject to the legislation of Congress enacted for the protection of tribal Indians and their property."

Thus we have three times held that the Pueblo's lands were under the protection of the Nonintercourse Act.

Mountain Bell argues that § 17 was not a grant of power to the Pueblos to convey their lands, but instead reaffirmed the power of alienation which already existed in the Pueblos, and implemented the government's guardianship role by restricting that power. This view is insupportable. The House Report on the Pueblo Lands Act, reprinting the language of the Senate Report, states:

"It was only by the decision of the case of the *United States v. Sandoval* (213 U.S. 28) that the Supreme Court of the United States definitely established the principle that these Indians were wards of the Government....

Up to the time of the decision of the *Sandoval* case in 1913, it had been assumed by both the Territorial and State courts of New Mexico, that the Pueb-

los has [sic] the right to alienate their property. From earliest times also the Pueblos had invited Spaniards and other non-Indians to dwell with them, and in many cases Pueblos and individual Indians attempted to convey lands to non-Indians which under the decision of the *Sandoval* case they were not competent to do." H.R. Rep. No. 787, 68th Cong. 1st Sess. 2 (1924).

It seems clear, then, that if § 17 is not a delegation of power, the 1928 agreement is void.

The terms of § 17 do not provide such authorization to the pueblos to grant their lands. The two clauses of § 17 of the Pueblo Lands Act are joined by the conjunctive "and." To us that means exactly what it says. No alienation of the Pueblo lands shall be made "except as may hereafter be provided by Congress" *and* no such conveyance "shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior." Two things are required. First, the lands must be conveyed in a manner provided by Congress. Second, the Secretary of the Interior must approve. As to the first, at the time of the agreement between the Pueblo and Mountain Bell, Congress had provided nothing. Hence, the first condition was not met. The fact that Congress had provided no method makes the approval of the Secretary meaningless. The operation of the second clause depends on compliance with the first clause.

Mountain Bell argues that to give the first clause the meaning which we have approved runs contrary to 25 U.S.C. §§ 311-322 providing among other things for rights of way for telephone and telegraph lines. The answer is that Congress did not extend the application of these statutes to the Pueblo Indians of New Mexico until the Act of



April 21, 1928, see 25 U.S.C. § 322, which was after the Secretary had given his approval to the agreement, with Mountain Bell. The Secretary's approval, given on April 13, 1928 says that it was done pursuant to the provisions of § 17 of the Act of June 7, 1924.

Mountain Bell makes much of the legislative history of the Pueblo Lands Act. We have examined the Senate and House reports of the hearings. Hearings before a subcommittee of the Committee on Public Lands and Surveys, on S. 3865 and 4223, 67th Cong. 4th Session; Hearings before the Committee on Indian Affairs on H.R. 13452 and H.R. 13674, 67th Cong. 4th Session. We find that the most that can be said about them is that they are ambiguous and add nothing to the express language of the statute. If it be conceded that the statute is ambiguous, and we do not feel that it is, then as said in *Bryan v. Itasca County*, 426 U.S. 373, 392:

"... we must be guided by that 'eminently sound and vital canon,' *Northern Cheyenne Tribe v. Hollowbreast* 425 U.S. 649, 655 n. 7 (1976), that 'statutes passed for the benefit of dependent Indian tribes ... are to be liberally construed, doubtful expressions being resolved in favor of the Indians.'"

See also *United States v. Santa Fe Pacific Railroad Co.*, 314 U.S. 339, 354.

Mountain Bell says that the administrative construction of the statute supports its contentions. Although the construction put on a statute by the agency charged with administering it is entitled to deference, the courts are the final authorities on statutory construction and are not obliged to accept an administrative construction which they deem inconsistent with a statutory mandate or frustrates

congressional policy. *SEC v. Sloan*, 436 U.S. 103, 117-118; and *FMC v. Seatrain Lines, Inc.*, 411 U.S. 726, 745-746. See also *Plateau, Inc. v. Dept. of Interior*, 10 Cir., 603 F.2d 161, 164. In our opinion, the administrative actions on which Mountain Bell relies violate the plain congressional intent of § 17 of the Pueblo Lands Act.

Mountain Bell argues that the Pueblo's claim is barred by the doctrines of *res judicata* and collateral estoppel because of the dismissal of Mountain Bell as a defendant in *United States v. Brown*, supra, No. 1814 Equity (D.N.M. 1928). The *Brown* suit was filed in November of 1927, under the Pueblo Lands Act of June 7, 1924. Mountain Bell neither entered an appearance in the case nor filed an answer. On April 13, 1928, the Assistant Secretary of the Interior approved an agreement between the Pueblo and Mountain Bell for a telephone lines easement across the Pueblo lands. The approval reads "APPROVED, pursuant to the provisions of Section 17 of the Act of June 7, 1924 (43 Stat. L. 636)."

The United States then filed a motion in the *Brown* case asking the dismissal of Mountain Bell and, as ground for the motion it alleged that,

"subsequent to the institution of this suit said defendant has obtained a deed from the Pueblo of Santa Ana approved April 13, 1928, by the Secretary of the Interior in accordance with Section 17 of the Pueblo Lands Act of June 7, 1924, and that thereby said defendant has obtained, for an adequate consideration, good and sufficient title to the right of way in controversy herein between plaintiff and said defendant."

In its order granting the motion the trial court echoed the language of the motion. It failed to state whether it

was with or without prejudice and it was, therefore without prejudice. See *Ex Parte Skinner and Eddy Corp.*, 265 U.S. 86. *Home Owners' Loan Corp. v. Huffman*, 8 Cir., 134 F.2d 314, 317, says that Rule 41 Fed.R.Civ.P., which adopted this standard, followed long established practice in federal courts and is intended to clarify and make definite that practice.

Mountain Bell argues that the three requirements for application of *res judicata* or collateral estoppel are (1) identity of causes of action, (2) identity of the parties or privity, and (3) a final judgment in the first suit. Only the third need be considered. Mountain Bell says that a voluntary dismissal may be a final judgment for *res judicata* purposes if it addresses and resolves the issue originally in dispute. In making this argument, Mountain Bell relies largely on cases wherein a consent decree was issued. A consent judgment may assume any of several forms. When entered as a decree of dismissal with prejudice, the judgment is generally preclusive. See *Bradford v. Bonner*, 5 Cir., 665 F.2d 680, 682 and *Bloomer Shippers Ass'n v. Illinois Central Gulf Railroad Co.*, 7 Cir., 655 F.2d 772, 777.

The dismissal order in *Brown* indicates neither the court's consideration nor approval of the agreement. The court said only that it appeared to the court that the defendant had secured good and sufficient title by a deed from the Pueblo approved by the Secretary of the Interior "in accordance with the provisions of Section 17 of the Pueblo Lands Act of June 7, 1924." There is no showing that the court was given a copy of the agreement. There were no findings of fact or conclusions of law.

In *National Life & Accident Insurance Co. v. Parkinson*, 10 Cir., 136 F.2d 506, 509, we said:

"Courts do not validate that which is invalid by merely consenting to a dismissal of the controversy over which its jurisdiction has been invoked."

We have held that the agreement is invalid under § 17 in the absence of congressional action. Mountain Bell would have us hold that the agreement was valid under the action of the district court in dismissing the case without prejudice and making no effort to decide the validity of the agreement. We reject the arguments of *res judicata* and collateral estoppel.

Pursuant to Rule 56, Fed.R.Civ.P., Mountain Bell moved for a partial summary judgment dismissing the plaintiff's claims for trespass for the period 1928 to date alleging that it is not a trespasser by reason of the April 13, 1928, approval of the Secretary of the Interior. The trial court denied the motion saying, I R. p. 143:

"The Pueblo shall recover damages from April 13, 1928 to the date the defendant's telephone and telegraph line was removed. Plaintiff's prayer for punitive damages is denied."

As the Pueblo points out, the commentators generally agree that where there is no genuine issue of fact, the court may enter summary judgment for either party, whether or not such party has made a motion therefor. See 10A Wright, Miller & Kane, *Federal Practice and Procedure: Civil* 2d § 2720, at 29-30, "the weight of authority is that summary judgment may be rendered in favor of the opposing party even though he has made no formal cross-motion under Rule 56."

Mountain Bell's motion does not address the claimed trespass prior to 1928, and hence the plaintiff's claim for damages for the period prior to 1928 remains at issue.

Affirmed.

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UNITED STATES COURT OF APPEALS

Tenth Circuit  
Office of the Clerk  
C404 United States Courthouse  
Denver, Colorado 80294

Howard K. Phillips  
Clerk

Telephone  
(303) 837-3157  
(303) 327-3157

May 14, 1984

Ms. Kathryn Marie Krause  
Mr. Stuart S. Gunkel  
Mr. John R. Stoller  
Mountain States Telephone and Telegraph  
Suite 1300, 931 14th Street  
Denver, Colorado 80202

Mr. H. Perry Ryon  
Attorney at Law  
P.O. Box 400, Station 733  
Albuquerque, New Mexico 87103

Re: 83-1220, Pueblo of Santa Ana vs. Mountain States  
Telephone and Telegraph, et al

Dear Counsel:

Enclosed is a copy of the opinion of the Court in the captioned cause. Judgment in accordance with the opinion has been entered today.

Sincerely yours,

/s/ Howard K. Phillips, Clerk

HKP/mju  
enc.

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(p. 1) IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

(Title omitted in printing)

THE ORAL DEPOSITION OF  
LOUISA B. SANDO

taken on behalf of the Defendant at 11:00 o'clock A.M. on the 15th day of July, 1981, in the offices of MOUNTAIN-BELL, 201 Third, Northwest, Albuquerque, New Mexico, before me, SOVEIDA GONZALES, Certified Shorthand Reporter and Notary Public.

A P P E A R A N C E S

For the Plaintiff: LUEBBEN, HUGHES AND KELLY  
Attorneys at Law  
By: Richard W. Hughes  
805 Tijeras, Northwest  
Albuquerque, New Mexico 87102

For Mountain Bell: MR. STUART S. GUNCKEL  
Mountain Bell  
931 Fourteenth Street, Room 1300  
Denver, Colorado 80202

MR. H. PERRY RYON  
Mountain Bell  
201 Third, Northwest  
Post Office Box 1355, Station 19  
Albuquerque, New Mexico 87103

(p. 2) For the Witness: Mr. Jeffery Taylor  
Solicitor's Office  
Federal Building  
Room 1696  
500 Gold, Southwest  
Albuquerque, New Mexico 87102



## I N D E X

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(Defendant's Exhibits 2 through 19 subsequently furnished to the Reporter)	

## (p. 3) S T I P U L A T I O N

It is hereby stipulated by and between counsel for the respective parties hereto that the within deposition is taken at this time and place pursuant to the Rules of Civil Procedure; that objections other than as to the form of questions are hereby reserved until the time of trial; that the signature of the witness is not waived and that the notice of filing is waived.

\* \* \* \* \*

LOUISA B. SANDO

having been first duly sworn according to law, upon her oath testified as follows:

## D I R E C T E X A M I N A T I O N

BY MR. GUNCKEL:

Q. Would you state your name, please?

A. Louisa B. Sando, S-a-n-d-o.

Q. What is your residence address?

A. 9412 Rio Grande Boulevard, Northwest, Albuquerque, New Mexico, 87114.

Q. By whom are you employed?

A. Bureau of Indian Affairs, Southern Pueblos Agency.

Q. How long have you been so employed?

A. At Southern Pueblos Agency since August of 1961, and I worked one year for the Bureau in Santa Fe prior to that.

Q. What is your present position?

(p. 4) A. Realty Specialist.

Q. How long have you been in that position?

A. Since 1973 and Realty Assistant in '71, and prior to that I was secretary.

Q. As a realty specialist, what are your duties?

A. To review and process any matters concerning Indian land. This can be right-of-way, leases, permits, acquisition, disposal. Anything involving the trust land of the Pueblos has to go through our agency for the ten Southern Pueblos and receive approval before they are valid.

Q. So, you do process real property matters involving the lands of the Southern Pueblos Indians of New Mexico?

A. Yes.

Q. And you are appearing here today, are you not,

as the designated witness pursuant to a subpoena served upon the Department of the Interior by Mountain Bell?

A. Yes.

(Whereupon, Defendant's Exhibit 1 was marked for identification.)

Q. Let me hand you what has been marked as Defendant's Exhibit 1 and ask you if that is a copy of the Subpoena that was served and to which you are responding?

A. Yes, it is.

Q. Now, you indicated that there are ten Pueblos that comprise, or under the supervision of the Southern Pueblos (p. 5) Agency?

A. At this time, yes.

Q. Is there also a Northern Pueblos Agency?

A. Yes.

Q. And how many pueblos are within that agency?

A. Eight.

Q. And do those 18 pueblos constitute all of the pueblos of the Indians of New Mexico?

A. No. There is one more, Zuni, which has its own agency.

Q. Where is that located?

A. South of Gallup

Q. But is the Northern office located here in Albuquerque?

A. It's in Santa Fe.

Q. How many are in Zuni?

A. Just the one pueblo, Zuni Pueblo.

Q. Now, in responding to the Subpoena for the deposition today, have you examined the property records of the Southern Pueblos Agency for purposes of responding?

A. Yes, I have.

Q. And in so examining those records, were you looking for conveyances, sales, grants, leases, titles or interest in or to lands of any of the southern pueblos of New Mexico signed by the Secretary of the Interior pursuant to Section 17 of the Act of June 7, 1924?

A. Yes, that's what I was looking for.

(p. 6) Q. And did you find such conveyances, sales, grants or leases?

A. Yes.

Q. How many did you find?

A. Altogether, rights-of-way are 64.

Q. And those were?

A. Those are rights-of-way and there is one conveyance.

Q. And during what period of time were these rights-of way and conveyances approved?

A. The earliest approval date is shown is October, 1924, and the latest was in December of 1959.

Q. Was that latest one a right-of-way?

A. I believe so. Well, yes. There was only one where it conveyed title to land, so all of the others were rights-of-way.

Q. And all these 64 rights-of-way and one conveyance, they were all approved by the Secretary of Interior?

A. The approval titles were shown variously as Assistant Secretary of Interior, First Assistant Secretary of Interior, and I found one by the Secretary of Interior, himself.

Q. Were all of these rights-of-way and conveyances also signed by the granting pueblos?

A. I believe so. I didn't check for that specifically. That was not one of the questions that Mr. Ortega gave me as having been agreed to with you, that I would be questioned on.

(p. 7) Q. But to your recollection in reviewing them, you do recall that some of these at least were signed by the pueblos?

A. Yes.

Q. What was the purpose for which these 64 rights-of-way were granted and approved?

A. Roads, pipelines, power lines, ditches and canals, railroads, telephone and telegraph.

Q. Now, how many of these rights-of-way were across the land of the Pueblo Santa Ana?

A. Nine.

Q. And during what period were these approved?

A. The earliest was August 13, 1926, and the latest was March 5, 1958.

Q. And all of these nine were approved by the Secretary of Interior, were they?

A. Or his representative, Assistant Secretary.

Q. And what were the purposes for which these nine rights-of-way were granted?

A. Okay. Two were to the Bureau of Reclamation for canals; one was to Southern Union Gas Company for pipelines; one was the New Mexico Highway Department for U.S. 85—it wasn't labeled that initially, but that is now U.S. 85; one to Mountain States Telephone; one to Postal Telegraph Cable Company for a telegraph line; one to the Atchison, Topeka and Santa Fe Railway for the main line built through; one (p. 8) to New Mexico Power Company, which is now Public Service Company, for power line; one to the Santa Fe Northwestern Railway Company for railroad.

Q. Do you have copies of those nine rights-of-way across the Santa Ana lands?

A. Yes, they are all here.

Q. I wonder if we might see those, please, pursuant to the Subpoena.

A. Do you want to start with a specific one, or do you just want to look, because I've gone through and marked various items.

Q. If we could take a moment and go off the record.

(Whereupon, a brief discussion was held off the record.)



MR. GUNCKEL: I have examined the rights-of-way across the Indian lands of the Santa Ana Pueblo that you produced. Can we agree, Counsel, that the witness may, after this deposition, make copies of each of the nine rights-of-way that she has furnished here today, and that they then be sent to the Reporter and marked as Defendant's Exhibit 2 through 10 and attached to the original of the deposition?

MR. HUGHES: Yes.

MR. GUNCKEL: Is that agreeable with you, Mr. Taylor?

MR. TAYLOR: Yes.

Q. Is that fine with you?

(p. 9) A. Yes.

Q. If you will do that, I will appreciate it. The 64 rights-of-way that cross the other southern pueblo lands, did those also include rights-of-way granted to private parties?

A. You said 64 other. That 64 includes Santa Ana. There are 55 other.

Q. Did the 55 other include rights-of-way granted to private parties?

A. No. I have them listed as roads, pipelines, power lines, railroads, telephone and telegraph, ditches, canals. There would be no private individuals involved in that.

Q. To grantees other than governmental agencies?

A. All right. Private corporations, well, the pipelines, the power lines, the railroads, telephone and telegraph, would have been to private corporations.

Q. Thank you. Do you know what the procedures in 1928 for approval of rights-of-way under this Act across Indian pueblo lands in New Mexico was for approval by the Secretary of Interior?

A. Only as it shows in the records in these files. Apparently, the superintendent or his representative from the agency would meet with the tribe and with a representative of the company, and they would agree if they wanted to grant the right-of-way and agree on amount, and then the company (p. 10) submitted its application and drawings of the location of the right-of-way. The superintendent then sent that to Washington to the Commissioner of Indian Affairs with his recommendation that it should be approved. The Commissioner in turn referred it to the Secretary of Interior for approval, and there is correspondence in there indicating these various steps.

Q. All right. And, to your knowledge, do you know if that procedure was followed with reference to the right-of-way that was granted to Mountain Bell, a copy of which is attached to the Supoena that was served?

A. I'd like to look through the files and check this.

Q. If you would.

A. In the file there is a letter dated March 29, 1928, from the Superintendent of Southern Pueblos Agency to the Commissioner of Indian Affairs submitting five copies of the right-of-way, the agreement between Mountain States Telephone and Telegraph and Santa Ana Pueblo. "I was present at a meeting between the Indians and the representatives of the telephone company wherein an agreement was reached to pay to the pueblo \$101.60 for

this right-of-way. We believe this to be a fair price and it is a little higher than the price paid by this company to some of the other pueblos, but this was done for the reason that the Indians disputed the south boundary of their grant as (p. 11) defined by the Pueblo Lands Board, and rather than discuss this matter, the company paid what the Indians asked as a total, which was the equivalent of 80 cents a pole for 127 poles. We therefore recommend that this agreement be approved, and upon its approval, we would request authority to pay this money to the Governor of the pueblo." Signed, Lem, L-e-m A. Towers, Superintendent.

Q. And is there a response to that letter?

A. Well, from there it went to the Secretary of the Interior, a letter signed by the Assistant Commissioner, and that was dated April 11, 1928: "The Honorable Secretary of the Interior: There is transmitted herewith letter dated March 29, 1928 from the Superintendent of Southern Pueblos Agency," transmitting the right-of-way, and then he reports the payment agreed upon, and then he states: "In view of the facts presented, it is recommended that the agreement herewith be approved pursuant to the provisions of Section 17 of the Act of June 7, 1924 (43 Stat. L. 636), and that authority be granted for the Superintendent of the Southern Pueblos Agency to turn over the consideration, amounting to \$101.60, to the Governor of Santa Ana Pueblo for the benefit of the Indians thereof." Signed, E. B. Meritt. I'm not sure about the "B", Meritt. Anyway, Assistant Commissioner, and that carries the approval of the Assistant Secretary under date of April 13, 1928.

(p. 12) Q. Excuse me, is it Mrs. or Miss?

A. Yes, Mrs.

Q. Mrs. Sando, I wonder if you would in your copying make a copy of the letter of March 29, 1928 that you have read so that that may be submitted to the Reporter and attached to the deposition as Exhibit 11, and if you would also make a copy of the letter of April 11, 1928, that you have also just read, and furnish to the Reporter so it may be attached to the deposition and identified as Exhibit 12.

A. All right.

MR. GUNCKEL: Is that agreeable, Mr. Hughes?

MR. HUGHES: Yes.

Q. Is there any other correspondence in the file relative to the approval of Mountain Bell right-of-way by the Secretary of the Interior?

A. No. I went to our Title Plant and copied all the documents that are on record, and the only other thing I found was the actual application from the company dated March 27, 1928, and various attachments to that, and these two letters that I have just read from were also in the Title Plant.

Q. Might I see that letter that you have referred to of March 27, 1928?—Mrs. Sando, if you would also make a copy of that letter of March 27, 1928, together with the attachments, and furnish that also to the Reporter to be identified as Exhibit 13 and attached to the deposition, if (p. 13) that's agreeable with everyone.

MR. HUGHES: Yes. Could you identify that letter again?

A. March 27, 1928, submitting formal application, Mountain States Telephone.

Q. Mrs. Sando, based upon your review of the file and your knowledge of the procedures, does it appear that the procedures in effect at the time in 1928 were followed for the approval of the Mountain Bell right-of-way?

A. It would appear so from the record.

Q. Mrs. Sando, do you know whether there was written delegation of authority from the Secretary of Interior to the Assistant Secretary for approval of the right-of-way at that point in time?

A. No knowledge of that.

Q. Do you know whether, if there was such a written delegation, where it would be filed or where it might be found if it's in existence today?

A. In the Washington office of the Secretary of Interior.

Q. Can you give me any name of any person I might contact or communicate with to see if there is such a thing?

A. I can't say offhand.

Q. Mrs. Sando, do you have any knowledge or information of any entries by Mountain Bell, its agents or contractors onto the right-of-way, copy of which was attached to the (p. 14) Subpoena?

A. Yes. I found two letters, one dated June 18, 1934, addressed to the Governor of Santa Ana from the Superintendent, Lem A. Towers, and he states: "We understand that Mountain States Telephone and Telegraph

Company have cut the boundary fence near the Angostura Arroyo, and on taking this matter up with them, they have suggested that they be permitted to put a gate in this fence, same to be locked and one key to be given to them and one key given to you." And then another letter, February 1st, 1935, to the Governor of Santa Ana from the Superintendent, Lem A. Towers. States in part, referring to the gates again: "In view of the fact that these gates will be locked and no one other than the Indians and company will be able to open them, I see no reason why this permission should not be granted, and I believe it will be advantageous to the Indians because in the past the telephone company has cut the fence, and while they repaired same, it is not as good as having a gate for them to use." And they obviously had to make entries, because the line was installed.

Q. But those are the only entries you have any record of?

A. Yes.

Q. I wonder if you would make copies of each of those letters you have referred to and furnish them to the Reporter to be (p. 15) marked as Exhibits 14 and 15, to be attached to this deposition.

And there's nothing else in the file or other knowledge that you have of any particular entries by Mountain Bell?

A. There's nothing in the file.

Q. And you don't know of anything other than that, specifically, yourself?

A. I would have no reason to.



Q. Mrs. Sando, do you have any knowledge or information of any relocation of the telephone line that was constructed by Mountain Bell on this easement?

A. The records do not indicate any relocations.

Q. So there are no such documents indicating any relocation?

A. No.

Q. Mrs. Sando, do you know of any notice or information that was given to Mountain Bell at any time after the approval of this easement to the effect that the telephone line constructed by Mountain Bell trespassed upon the Santa Ana lands or was not authorized or the right-of-way was not valid?

A. We have nothing in our file on it.

Q. And you don't know of anything? You have no knowledge?

A. Nothing from the Bureau.

Q. Mrs. Sando, have there been any communications or (p. 16) correspondence or discussions with the Pueblo of Santa Ana or its agents or representatives in 1980 or 1981 relative to termination or abandonment by Mountain Bell of this easement?

A. Yes. In October of '80 I received a copy of a Mountain Bell document, dated 03/14/80. It was an agreement between Santa Ana Pueblo and a representative of the telephone company concerning, I believe, taking the poles down. Do you want me to read? "This is a request to enter into an agreement with Santa Ana Pueblo. I propose that Santa Ana Pueblo be allowed to remove all

poles, all crossarms and hardware within Santa Ana reservation of the Denver El Paso Toll Line."

Q. Did your office take any action or do anything upon receipt of that?

A. Yes. We wrote to Dan Lyon, representative of the company, indicating we understood that they had entered into an agreement for the Pueblo to remove these poles and asked if they had relinquished their rights to the line that was in place.

Q. And what date is that letter?

A. December 5, 1980.

Q. Was there any response to that letter?

A. Mr. Lyon responded December 8, 1980: "The remainder of the Las Vegas-Albuquerque section of our Denver-El Paso Line, (p. 17) which crosses the 'San Felipe Pueblo Grant' and the 'El Ranchito Grant,' has been removed and the accompanying rights abandoned."

Q. Is there any additional?

A. "We concur that termination documents, reflecting the aforesaid relinquishments, are in order. When duly executed, please send us copies of same. Our continued full cooperation in all matters of mutual concern is assured."

Q. Was there any further correspondence?

A. February 13, 1981, I turned to Luebben, Hughes and Kelly a copy of the agreement between the telephone company and Santa Ana Pueblo.

Q. Was there any request that accompanied that transmittal?

A. A request? It was a verbal request for a copy of it.

Q. Did they indicate to you why they wanted it?

MR. HUGHES: You can answer yes or no.

A. I don't recall that they said why they wanted it. They just wanted to have a copy of it.

Q. Did you have any further communications or discussions or contacts with Luebben, Hughes and Kelly or representatives of the Pueblo relative to that abandonment of the right-of-way?

A. I believe I talked to Richard Hughes one day and we agreed that any termination documents would be held in abeyance.

(p. 18) Q. Why was that?

MR. HUGHES: I will object to the question on the grounds that it inquires into matters within the attorney-client privilege.

MR. GUNCKEL: I'm not sure I understand, Mr. Hughes. Who is the attorney and who is the client?

MR. HUGHES: I am the attorney and it is our view that actions taken by Mrs. Sando in the course of the trust responsibility relative to legal affairs at Santa Ana are within the scope of attorney-client privilege as defined in New Mexico.

MR. GUNCKEL: So that it's your position that there is an attorney-client relationship between you, as an attorney, and Mrs. Sando, as the client?

MR. HUGHES: To the extent that she is acting on behalf of the United States as trustee for the lands of Santa Ana Pueblo, yes.

MR. GUNCKEL: So that the communications and discussions, then, between you and Mrs. Sando are then covered by the privilege, is your position?

MR. HUGHES: That's our position.

MR. GUNCKEL: And were you also acting, Mr. Hughes, as attorney for the Pueblo of Santa Ana in those discussions?

MR. HUGHES: Yes.

Q. Mrs. Sando, I wonder if you would also make copies of the (p. 19) letters that you have just identified, which were dated March, 1980, from Mountain Bell, regarding the telephone poles, to be identified as Exhibit 16; a copy of the letter dated December 5, 1980 to Mr. Lyon, to be identified as Exhibit 17; a copy of the letter dated December 8, 1980, from Mr. Lyon, to be identified as Exhibit 18; and a copy of the letter dated February 13, 1981 to Luebben, Hughes and Kelly to be identified as Exhibit 19, and furnish those to the Reporter, if you will.

A. All right.

MR. GUNCKEL: I have no further questions.

#### CROSS-EXAMINATION

BY MR. HUGHES:

Q. Mrs. Sando, did you, in the course of your review of the files prior to attending this deposition, note which

of the rights-of-way, that you've testified to here, are still in existence?

A. Yes.

Q. Of the 64 covering all the southern pueblos, how many of those are still in effect?

A. Fifty-five.

Q. And of the nine at Santa Ana, how many of those?

A. Six are still in effect.

Q. Does that include the Mountain States right-of-way?

A. Yes, it does.

(p. 20) Q. Mr. Gunckel asked you some questions regarding apparent compliance with procedures in the manner in which the Mountain States right-of-way was approved. Was your testimony on that point given with personal knowledge of actual official procedures that were in effect in the United Pueblos Agency or at the time, or are your observations simply from practices reflected from reading the files?

A. Simply the practices that are recorded in the file material.

Q. Do you have any personal knowledge of regulations or official procedures that were in effect as of that time?

A. No.

MR. HUGHES: I have nothing further.

MR. GUNCKEL: I have nothing.

(Whereupon, the taking of the deposition was concluded.)

(p. 21) Rule No. 30 New Mexico Rules of Civil Procedure.

(e) Any changes in form or substance which the witness desires to make shall be entered upon this deposition by the officer with a statement of the reasons given by the witness for making them.

PAGE	LINE	CHANGE	REASON
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(p. 22) I have read the foregoing testimony reported on Pages 3 through 20, inclusive, and the same is a true and correct transcript of said testimony, except such corrections as I have listed on the foregoing page.

\_\_\_\_\_  
Louisa B. Sando

SUBSCRIBED AND SWORN TO before me this  
\_\_\_\_ day of \_\_\_\_\_, 19 .

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

(p. 23) STATE OF NEW MEXICO )  
COUNTY OF BERNALILLO )ss.  
)

I, SOVEIDA GONZALES, a Certified Shorthand Reporter and Notary Public within and for the County of



Bernalillo, State of New Mexico, do hereby certify that the foregoing Deposition is a complete and accurate record of the testimony given by the witness; that the witness was by me first duly sworn according to law; that I am neither related to nor employed by any of the parties to this action nor the attorneys of record herein; nor have I any financial interest in the outcome of said litigation.

/s/ Soveida Gonzales  
 Certified Shorthand Reporter  
 and Notary Public

MY COMMISSION EXPIRES:  
 3/28/82

Cost of the original to the Defendant: \$\_\_\_\_\_

DEFENDANT'S EXHIBIT 1—Subpoena and Notice of  
 Deposition Omitted in Printing

DEFENDANT'S EXHIBIT 2

APR 23 1928

The Honorable

The Secretary of the Interior

Sir:

On July 11, 1924, approval was given to the application of the Santa Fe Northwestern Railway Company for railroad right of way across the Santa Ana and Zia Indian Pueblo land grants, in New Mexico, and similar application of the company affecting the El Ranchito land grant of the Santa Ana Pueblo was approved November

1, 1924, under the Act of March 2, 1899 (39 Stat. L., [#illegible]), as amended.

There is now transmitted letter dated April 14, 1926, from Messrs. Hanna & Wilson, of Albuquerque, New Mexico, attorneys for the company, presenting deeds executed by the Governor, Lt. Governor and members of the Council of the Pueblos of Santa Ana and Zia, respectively confirming and conveying to the company the right of way previously granted by the Department.

Attached to each deed is the certificate of the Supervisor in Charge of the Southern Pueblos Agency to the effect that the deed was executed in the presence of his representative and with his full knowledge and consent, and recommending that the deed be approved.

The deeds seem to be executed in proper form and in view of the record it is respectfully recommended that each instrument be approved in accordance with Section 17 of the Act of June 7, 1924 (43 Stat. L., 636) and returned to this Office for recordation and delivery.

Respectfully,  
 [word illegible] Commissioner

4-21-chi

Deeds approved  
 as recommended:

[Signed] John H. Edwards

Assistant Secretary

(Also part of Defendant's Exhibit 2 was the Right of Way Agreement between the Pueblo of Santa Ana and Mountain Bell, dated February 23, 1928. This can be found at J.A. 38-43.)

## DEFENDANT'S EXHIBIT 3

THIS INDENTURE, made this /s/ 5th day of /s/ October, 1928, between the Pueblo of Santa Ana, a body politic and corporate within the State of New Mexico, first party, and The Atchison Topeka and Santa Fe Railway Company, a Kansas corporation, second party:

## RECITALS:

Second party has occupied, for many years, the parcels of land hereinafter described for railroad right of way and station purposes. The question has arisen between said parties as to the right of the second party in and to said parcels of land, and suit was recently filed by the United States of America, as guardian for first party, touching the right of second party to said parcels, said suit being numbered 1814 in Equity on the Docket of the District Court of the United States for the District of New Mexico. The parties desire to settle and adjust any controversy which may exist, and, in order to accomplish this result, the following grant, for the consideration wherein named, is hereby made by first party to second party:

[word illegible]

[2 words illegible] of the premises and of the payment by second party of the sum of /s/ One Hundred Thirty-Dollars (\$/s/ 130/00), lawful money of the United States of America, receipt whereof is hereby acknowledged, first party hereby grants and conveys to second party, its successors and assigns, an easement and right of way for railroad and transportation purposes over and across the following described land:

All that certain tract of parcel of land situated in and being a part of the Santa Ana Pueblo or El Ranchito grant in Township 18 North, Range 4 East of the New Mexico Principal Meridian in Sandoval County, State of

New Mexico, and being more particularly described as follows:

A strip of land [word illegible] feet in width, lying [word illegible] feet on each side of the centerline of the main track of The Atchison, Topeka and Santa Fe Railway Company (as said train track is now located and contracted over and across the Santa Ana Pueblo or El Ranchito Grant) and entering from the south boundary line of the San Felipe Pueblo Grant (said boundary line also being the north boundary line of the Santa Ana Pueblo or El Ranchito Grant) in a southwesterly direction to the south boundary line of the Santa Ana Pueblo or El Ranchito Grant, the center line of the main track of the Atchison, Topeka and Santa Fe Railway Company over and across the Santa Ana Pueblo or El Ranchito Grant being more particularly described as follows:

Commencing at a [2 words illegible] boundary barrier on the south boundary line of the San Felipe Pueblo Grant, said marker being marked [word illegible] mi. (6 miles; thence in a westerly direction along said south boundary line (assuming for the purpose of this description that said south boundary line has a bearing of north 80 degrees 54 minutes west, [# illegible] feet to an intersection with the center line of said main track at its profile station 1553 +8.9 feet; thence south 33 degrees 15 minutes west along center line of said main track, a distance of [# illegible] feet, more or less, to an intersection with the south boundary line of the Santa Ana Pueblo or El Ranchito Grant, said south boundary line intersects center line of said main track at its profile station 1662 plus 40 feet, and has a bearing of north [# illegible] degrees [# illegible] minutes west.

The foregoing described tract of land contains an area of 34.44 acres more or less.

The extent of the rights hereby granted is the same as those which may be acquired by [2 words illegible] company through the public [word illegible] of the [2

words illegible] under and by compliance with the Act of Congress [4 words illegible] statutes at Large [# illegible].

In Witness Whereof, the first party has executed this indenture the day and year first written, by and through the undersigned, having the duly selected and authorized agents of said pueblo selected, in convention and bled, to execute said document, and constituting the governing authorities of first party.

PUEBLO OF SANTA ANA

By /s/ Emiliano Otero  
Its Governor

/s/ Jose Reye Leon  
Its Lieutenant Governor

/s/ Pueblo has no Secy's  
Secretary

/s/ Porfirio Montoyo

/s/ Daniel Otero

/s/ Hilario Sanchez

/s/ Jose Ray Helo

/s/ Rafael Gallegos

Witnesses

[name illegible]

State of New Mexico )  
 ) : ss  
County of /s/ Bernalillo )

On this /s/ 5th day of /s/ October, 1928, before me appeared /s/ Emiliano Otero, to me known to be the Governor; /s/ Jose Reye Leon, to me known to be the Lieutenant Governor; \_\_\_\_\_, to me known to be the Secretary, and /s/ Porfirio Montoya, /s/ Daniel Otero, /s/ Hilario Sanchez, /s/ Jose Rey Helo and /s/ Rafael Gallegos, each and all personally known to me to be the Councilmen of the Pueblo of Santa Ana, and acknowledged that they were each and all said officers of said pueblo; that the Pueblo of Santa Ana has no corporate seal; that said instrument was executed as the free act and deed of the signers of same, and also the free act and deed of said Pueblo of Santa Ana.

Witness my hand and notarial seal the day and year in this certificate first written.

/s/ Frances Jay Rusuro  
Notary Public

My commission expires: /s/ Nov. 19, 1931

THIS INDENTURE made this 22nd day of March, 1926, by and between the PUEBLO DE (OF) SANTA ANA, a corporation organized and existing under and by virtue of the laws of the State of New Mexico, party of the first part, and the SANTA FE NORTH-WESTERN RY. CO., organized and existing under and by virtue of the laws of the State of New Mexico, party of the second part, WITNESSETH: that



WHEREAS on March 8, 1923, the Department of the Interior granted to the party of the second part permission to proceed with the construction of a railroad, pending approval of maps of definite location and showing required by railroad right-of-way Act of March 2, 1899, and acts amendatory thereof; and

WHEREAS, the foregoing requirements of the Department of the Interior having been fully complied with, the Secretary of the Department of the Interior did on July 11, 1924, approve the application of the party of the second part and the maps of definite location of said right-of-way, together with the schedule of damages determined by the appraisers in the manner provided in the Act of March 2, 1899, and the acts amendatory thereof; and

WHEREAS, on March 21, 1924, the party of the second part, did by its President, G. A. Porter, under authority of its Board of Directors, execute a stipulation binding itself, its successors and assigns, in the matter of use and occupancy of said lands for right-of-way purposes in conformity with the provisions of the Act of Congress of March 2, 1899, and acts amendatory thereof, which said stipulation was subsequently approved by the Secretary of the Interior on July 11, 1924, this stipulation being hereto attached and made a part hereof; and

WHEREAS, on March 21, 1924, the Governor of said Pueblo de (of) Santa Ana, Daniel Otero, and the Secretary and interpreter, Porfirio Montoya, and two principals of the Pueblo, Miguel Montoya Silva and Nasario Trujillo, for and on behalf of said Pueblo de (of) Santa Ana, officially accepted the aforementioned schedule of damages in full compensation of damages sustained through the construction of said railway; and

WHEREAS, on July 11, 1924, the Secretary of the Interior authorized the acceptance of the sum of two hundred ninety-seven and two-hundredths dollars (\$297.02), fixed by the appraisal and schedule of damages, in full settlement of the damages caused by the construction of said railway, which said sum was tendered and accepted under said authority; and

WHEREAS, the Governor and Council of the Pueblo de (of) Santa Ana have regularly called a meeting of the Council and other residents and inhabitants of the Pueblo de (of) Santa Ana for the purpose of authorizing the execution of a grant of the right-of-way across the lands of said Pueblo, as hereinafter described, in the nature of an easement; and

WHEREAS, after full and careful consideration of all the foregoing matters and things herein set forth, the Governor, Lieutenant-Governor, and members of the Council of the said Pueblo de (of) SANTA ANA were authorized and directed to execute and deliver this conveyance of a right-of-way in the nature of an easement across the lands of the said Pueblo de (of) Santa Ana;

NOW, THEREFORE, for and in consideration of the sum of two hundred ninety seven dollars and two cents (\$297.02) paid and accepted under the schedule of damages above referred to, the receipt of which is hereby acknowledged, said party of the first part hereby grants, bargains, sells, conveys, and warrants, to the party of the second part, its successors and assigns forever, a right-of-way and easement one hundred (100) to two hundred (200) feet in width, as hereinafter described, with the right, privilege and authority to the said party of the second

part, its successors, assigns, lessees and tenants, to construct, operate and maintain a railroad over, through, and across the following described lands situate in Sandoval County, State of New Mexico, and within the said Pueblo de (of) Santa Ana Grant, to-wit:

A strip, piece or parcel or land 100 ft. in width; with the exception of such increases and decreases as are hereinafter noted; same being 50 ft. on either side of the center line of the Santa Fe Northwestern Ry. as is now located and constructed over and across the Santa Ana Pueblo Grant, in Sandoval County, New Mexico, and extending from Engineer's location station 421 plus 32.6 to Engineer's location station 807 plus 72.7, said center line and width of right-of-way being more particularly described as follows:

Beginning at a point on the west line of the Santa Ana Pueblo Grant, said point being Engineer's location station 421 plus 32.6 and lying south 2775.0 ft. of the government monument marking the N.W. corner of said grant; thence S.  $47^{\circ}31'$  E., 1097.5 ft. to Engineer's location station 431 plus 00, at which point the width of right-of-way increases at right angles to said center line, to 100 ft. on either side of said center line; thence S.  $47^{\circ}31'$  E. 1700.0 ft. to Engineer's location station 448 plus 00, at which point the width of right-of-way decreases at right angles to said center line to 50 ft. on either side of said center line; thence S.  $47^{\circ}31'$  E. 1423.2 ft. to Engineer's location station 462 plus 23.2; thence along the arc of a  $2^{\circ}00'$  curve to the right 1308.3 ft. to Engineer's location station 475 plus 31.5; thence S.  $21^{\circ}21'$  E. 768 ft. to Engineer's location station 483 plus 00, at which point the width of right of way increases at right angles to said center line, to 100 ft. on either side of said center line; thence S.  $21^{\circ}21'$  E. [# illegible] ft. to Engineer's location station 488 plus 00, at which point the width of right-of-way decreases at right angles to said center line to 50 ft. on either side of said center line; thence S.

$21^{\circ}21'$  E. 1700 ft. to Engineer's location station 505 plus 00, at which point the width of the right-of-way increases at right angles to said center line, to 100 ft. on either side of said center line, thence S.  $21^{\circ}21'$  E. 700.0 ft. to Engineer's location station 512 plus 00, at which point the width of the right-of-way decreases at right angles to said center line to 50 ft. on either side of said center line; thence S.  $21^{\circ}21'$  E. 3100.0 ft. to Engineer's location station 543 plus 00, at which point the width of right-of-way increases at right angles to said center line to 75 ft. on either side of said center line; thence S.  $21^{\circ}21'$  E. 1161.9 ft. to Engineer's location station 554 plus 61.9; thence on the arc of a  $2^{\circ}00'$  curve to the left 238.1 ft. to Engineer's location station 557 plus 00, at which point the width of the right-of-way decreases at right angles to said center line to 50 ft. on either side of the center line; thence continuing on the arc of said  $2^{\circ}00'$  curve to the left 785.2 ft. to Engineer's location station 564 plus 85.2; thence S.  $41^{\circ}49'$  E. 314.8 ft. to Engineer's location station 568 plus 00, at which point the width of the right-of-way increases, at right angles to said center line, to 75 ft. on either side of said center line; thence S.  $41^{\circ}49'$  E. 7204.1 ft. to Engineer's location station 640 plus 04.1; thence on the arc of a  $1^{\circ}00'$  curve to the left, 900.0 ft. to Engineer's location station 649 plus 04.1; thence S.  $50^{\circ}49'$  E. 1895.9 ft. to Engineer's location station 668 plus 00. at which point the width of right-of-way decreases, at right angles to the center line, to 50 ft. on either side of said center line; thence S.  $50^{\circ}49'$  E. 2681.8 ft. to Engineer's location station 694 plus 81.8; thence on the arc of a  $4^{\circ}00'$  curve to the left 813.7 ft. to Engineer's location station 702 plus 95.5, at which point the right-of-way increases at right angles to said center line, to 100 ft. on either side of said center line; thence S.  $83^{\circ}22'$  E. 2357.8 to Engineer's location station 726 plus 53.3, at which point the width of the right-of-way decreases, at right angles to said center line, to 50 ft. on either side of said center line; thence on the arc of a  $1^{\circ}00'$  curve to the right 1090.0 ft. to



Engineer's location station 737 plus 43.3; thence S. 72°28' E. 4048.2 ft. to Engineer's location station 785 plus 57.4; thence on the arc of a 2°00' curve to the right 879.2 ft. to Engineer's location station 794 plus 36.6; thence S. 54°53' E. 163.4 to Engineer's location station 796 plus 00, at which point the width of right-of-way increases, at right angles to said center line, to 75 ft. on either side of said center line; thence S. 54°53' E. 612.9 ft. to Engineer's location station 802 plus 12.9; thence on the arc of a 1°30' curve to the left 559.8 ft. to Engineer's location station 807 plus 72.7, same being on the south line of said grant and lying west 1479.1 ft. from the government monument marking the S.E. corner of said grant.

The above described strip, piece or parcel of land contains 113.75 acres.

The original tracing and map of the survey of said right-of-way made January 27, 1923 by V. C. Coffey, Chief Engineer, have been filed with and approved by the Secretary of the Interior, on July 11, 1924. A blue print copy of same map being hereto attached and made a part thereof.

together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or any wise appertaining.

TO HAVE AND TO HOLD the above described premises for right-of-way (illegible) in the nature of an easement and every part thereof with the appurtenances, unto the said party of the second part, its successors and assigns, to their sole use, benefit and behoof forever; Provided that said described land shall revert to the party of the first part whenever it shall no longer be used by the party of the second part, its successors, assigns, lessees and tenants, for a railroad right-of-way.

IN WITNESS WHEREOF, the said Pueblo de (of) Santa Ana, the party of the first part, has caused these

presents to be executed the day and year first above written by its Governor, Lieutenant Governor, and a majority of the members of its Council.

WITNESSES TO ALL  
SIGNATURES.

PUEBLO DE (OF)  
SANTA ANA

Manuel Meia  
Philip Jayals  
Lewis R. McDonald  
R. R. Krinna  
Members of Council  
Jose Cruz Montoya  
His Mark (fingerprint)  
Porfirio Montoya  
Victoria Montoya  
Jose Emilio Raton  
Antonio Gallegos  
His Mark (fingerprint)  
Jose Antonio Cristobal  
His Mark (fingerprint)  
Nasario Trujillo  
His Mark (fingerprint)

By Hilario Sanchez  
Governor  
Santiago Tenario  
Lieutenant Governor  
Miguel Silva  
His Mark  
Daniel Otero  
Isidro Nuranjo  
His Mark (fingerprint)  
Rafael Gallegos  
Hijinio Garcia  
His Mark (fingerprint)  
Jose Porfinio  
Hinio Manchego  
His Mark (fingerprint)  
Jose Rey Helo  
His Mark (fingerprint)  
Florencio Roman  
His Mark (fingerprint)  
Jose Bobe Pino  
His Mark (fingerprint)  
Crusito Loretto  
His Mark (fingerprint)  
Cristo Raton



**DEFENDANT'S EXHIBIT 4**

On this 22nd day of March, 1926, before me personally appeared Hilario Sanchez, the Governor, and Santiago Tenorio, the Lieutenant Governor, and Miguel Silva, Daniel Otero, Isidro Naranjo, Rafael Gallegos, Hijinio Garcia Jose Porfirio, Hinio Manchego, Jose Rey Helo, Florencio Roman, Jose Bobe Pino, Cristo Raton, Jose Crez Montoya, Jose Emilio Raton, Antonio Gallegos, Crusito Loretto Porfirio Montoya, Valentino Montoya, Jose Antonio Cristobal and Nasaris Trujillo, members of the Pueblo Council of the Pueblo de (of) Santa-Ana, a corporation, each to me personally known, who being by me duly sworn, did say that he is the officer designated as such in the foregoing instrument, and that said instrument was signed and sealed in behalf of said corporation by authority of a majority of the members attending a meeting called for the purpose of authorizing the execution of said instrument, and said Hilario Sanchez, the Governor, and Santiago Tenorio, Lieutenant Governor, and the members of said Council whose names are affixed to the foregoing instrument, each for himself and not one for the other, acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof I have hereunto set my hand and notarial seal the day and date first above written.

**/s/ B. B. Weidirich**  
**Notary Public**

My commission expires March 22, 1929

THIS INDENTURE, made in triplicate this 9th day of SEPTEMBER, 1930, by and between the PUEBLO SANTA ANA, a corporation of the State of New Mexico, party of the first part, and the SOUTHERN UNION GAS COMPANY, a corporation authorized to do business under the laws of the State of New Mexico, party of the second part, WITNESSETH: that,

WHEREAS, the Southern Union Gas Company, a corporation, has made an application to the duly elected Governor of Pueblo de Santa Ana for a right-of-way in the nature of an easement for a pipe line crossing the lands of the party of the first part, and,

WHEREAS, the Governor has regularly called a meeting of the Council and other residents and inhabitants of the said Pueblo for the purpose of considering said application, and,

WHEREAS, after careful consideration the Governor and the Council have resolved to enter into a contract with the said Southern Union Gas Company, a corporation, the party of the second part herein, granting a right-of-way in the nature of an easement for said pipe lines across the lands of the said Pueblo;

NOW, THEREFORE, for and in consideration of the sum of Two Hundred Twenty and 38/100 (\$220.38) Dollars, and other valuable considerations in hand paid to the party of the first part by the party of the second part, the receipt of which is hereby acknowledged, the said party of the first part hereby agrees, bargains, sells, conveys

and warrants to the party of the second part, its successors and assigns, for the period of twenty (20) years, a right-of-way and easement twenty-five (25) feet in width with the right, privilege and authority to the said party of the second part, its successors, assigns, lessees and tenants, to construct, erect, operate and maintain a pipe line or lines for the purpose of transmitting and distributing natural gas in, on, along, over, through, across or under the following described lands situated in Sandoval County, State of New Mexico, to-wit:

#### TRACT 1

Beginning at station 729-07 on the center line survey of said pipe line, a point on the West boundary of El Ranchito Grant N.16°39'E., 809.8 feet distant from the southwest corner of said Grant; said beginning point being situate in Section 30, Township 13 North, Range 4 East, N.M. P.M.; running thence from said beginning station N.86°28'E., 89 feet to station 729-96 on said center line survey, a point at the westerly end of State Highway bridge No.434; thence S. 69°47'E., running upon said bridge 1030 feet to station 740-26 on said center line survey, a point at the Easterly end of said bridge; thence S.79°32'E., 974 feet to station 750 on said center line survey; thence S.83°02'E., 1746 feet to station 767-46 on said center line survey, a point on the South boundary of said El Ranchito Grant N.89°51'E., 743 feet distant from the corner marking the intersection of the west boundary of the Felipe Gutierrez, or Town of Bernalillo Grant, with said south boundary of said El Ranchito Grant; said terminal point being situate in Section 29 of said Township 13 North, Range 4 East, N.M.P.M.; the length of line as herein described being 3839 feet, more or less.

#### TRACT 2

Beginning at station 870-44 on the center line survey of said pipe line, a point on the south boundary of El

Ranchito Grant N.89°54'E., 144.6 feet distant from the Four (4) Mile Corner on said Grant boundary; said point of beginning being situate in Section 21, Township 13 North, Range 4 East, N.M.P.M.; running thence from said beginning station N.36°24'E., 7156 feet to station 942 on said center line survey; thence N.17°19'E., 2256 feet to station 964-56 on said center line survey; thence N.1°39'E., 659 feet to station 971-15 on said center line survey; thence N.29°09'E., 285 feet to station 974 on said center line survey; thence N.37°43'E., 129 feet to station 975-29, a point on the south boundary of San Felipe Pueblo Grant N.86°58'W., 389.9 feet distant from the Six (6) Mile Corner on said last named Grant boundary; thence continuing N.37°43'E., 220 feet to station 977-49 on said center line survey, a point on the easterly boundary of Private Claim No. 4 in said Grant N.58°46'E., 19 feet distant from corner No. 6 of said Private Claim No.4; thence entering said Private Claim No.4 and continuing N.37°43'E., 51 feet to station 978 on said center line survey; thence N.37°28'E., across said Private Claim No. 4 a distance of 2200 feet to station 1000 on said center line survey; thence N.42°41'E., continuing across said Private Claim No. 4 a distance of 1034 feet to station 1010-34 on said center line survey, a point on the north boundary of said El Ranchito Grant N.74°15'W., 281 feet distant from Angle Point No. 6 on said last named Grant boundary; said terminal point being situate in Section 10 of said Township 13 North, Range 4 East, N.M.P.M.; the total length of line 83, herein described being 13,990 feet; the total length of line within said Grant, excepting therefrom the area contained in said Private Claim No. 4, being 10,705 feet, more or less.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to bury all pipes to a sufficient depth so as not to interfere with cultivation of soil, and to pay any damages which may arise to growing crops or fences from the construction, maintenance, and operation of said pipe lines; said damages, if



not mutually agreed upon, to be ascertained and determined by three disinterested persons one thereof to be appointed by the said Grantor, one by the said Grantee, and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive. Should more than one pipe line be laid under this grant at any time, the sum of twenty-five (25¢) cents per lineal rod for each additional line shall be paid, besides the damages above provided for.

Upon written application to the Grantee at Dallas, Texas, the Grantee will make or cause to be made, a tap on any gas pipe line constructed by Grantee on Grantor's premises for the purpose of supplying gas to the Grantor for domestic use only, the cost of meter and saddle to be borne by said Grantee, and all other expenses, including fittings, to be borne by Grantor, gas to be measured and furnished at the main line of Grantee at the same price and under the same rules and regulations as prevail in the nearest city or town where Grantee is supplying gas.

The easement herein granted is subject to the rights-of-way granted or to be granted to the Middle Rio Grande Conservancy District for construction of any ditches, drains, flumes and (or) all other works for the use or benefit of the Grantor and the Grantee herein consents and agrees to bear and pay the reasonable costs of any additional work or expense or (illegible) incurred by the Middle Rio Grande Conservancy District in its construction which may be brought about by the granting of this easement and construction of the proposed pipe line for transporting gas.

The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right

hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood that party securing this grant in behalf of Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this 12th day of September, A.D., 1930/

WITNESSES:

PUEBLO DE SANTA ANA

By Hilario Sanchez  
Governor

Valentino Montoya  
Lt. Governor

Emiliano Otero

Jose Rey Helo

Jose Cristo Raton

Florensio Roman  
His Mark (fingerprint)

Jose Cruz Montoya  
His Mark (fingerprint)

Elizio Andre  
His Mark (fingerprint)

Dudley Geruell

Kay Rhodes

Doreen Epsoell

Roy Rhodes

Dudley Roanell

Roy Rhodes

SOUTHERN UNION GAS COMPANY,  
By O. W. Murchison  
President

ATTEST:

K. M. Murchison  
Secretary



and the said C. W. Murchisen and K. Murchisen acknowledged said instrument to be the free act and deed of said corporation.

GIVEN under my hand and seal of office on this the  
25th day of Sept. A.D. 1930.

/s/ Alfredo Dittert  
Notary Public within and for  
Dallas County, Texas

My commission expires  
June 3, 1931

## DEPARTMENT OF THE INTERIOR

Jan. 20, 1931.

APPROVED, subject to the provisions of the Act of June 7, 1924 (43 Stat. L., 636); and subject also to any prior valid existing right or adverse claim.

/s/ Joe M. Dixon  
First Assistant Secretary

My Commisison expires:  
Feb. 20, 1933

## DEFENDANT'S EXHIBIT 5

THIS AGREEMENT, made this 27th day of February, A. D. 1928, by and between the Pueblo de Santa Ana, a New Mexico corporation, by *Emiliano Otero*, the Governor of the Pueblo de Santa Ana, *Jose Reye Leon*, Lieutenant-Governor of the Pueblo de Santa Ana, *Estoven Lujan*, *Jose Cruz Montoya*, *Porforio Montoya*, *Hilario Sanchez*, and \_\_\_\_\_, constituting the council and principal men of the Indian Pueblo de Santa Ana, for and on behalf of the inhabitants and residents and land owners of the Pueblo de Santa Ana, party of the first part;

BEFORE ME, the undersigned authority, on this day personally appeared C. W. Murchisen and K. Murchisen, who, being by me duly sworn, did say that they are President and Secretary respectively of the Southern Union Gas Company, a corporation, and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors

and the Postal Telegraph-Cable Company of New Mexico, a corporation organized and existing under the laws of the State of New Mexico, and having its office and principal place of business at Albuquerque, in the county of Bernalillo and state of New Mexico, party of the second part, WITNESSETH:

WHEREAS, The party of the second part, by its predecessor and predecessors in interest and title, during the year 1894, constructed line of telegraph over the lands and premises of the Pueblo de Santa Ana and erected poles, cables, and wires, and has maintained the said line of telegraph with the poles, cables, and wires down to the present time, and

WHEREAS, The said party of the second part, by and through its predecessor and predecessors in interest and ownership, was permitted and granted a right to construct and erect said line or telegraph and erect poles and string wires and conduits, as aforesaid, under and by virtue of the authority given and granted to the said party of the second part and its predecessors in title and interest, which said permit and permission was dated at Bernalillo, New Mexico, May 28, 1894, and which was signed by the Governor of the Pueblo de Santa Ana, a copy of which said permit and authority is as follows, to-wit:

Bernalillo, N.M. May 22nd, 1894

IN CONSIDERATION of the sum of Fifteen & 25/100 Dollar, receipt of which is hereby acknowledged, I hereby grant to the

POSTAL TELEGRAPH-CABLE COMPANY,  
Its successors or assigns, the right to construct and maintain and securely brace and guy a line of Telegraph poles and fixtures, and string wires thereon, and trim trees, on

and along the lands adjacent or close to the right of way of the A. T. & S. F. R. R., situated in Santa Ana Township, Bernalillo County, State of New Mexico; said Telegraph Company to be liable for all damages to fences and crops injured in the construction or maintenance of said line,

Witness:

C.R. Lewis

Znis x Vunuga  
His Mark

WHEREAS, Under an Act of Congress entitled, "An Act to Quiet Title to Lands Within Indian Pueblo Land Grants and For Other Purposes," which said Act was approved on the 7th day of June, 1924, there was established a board known as the Pueblo Lands Board for the purpose of quieting title to the various parcels and tracts of land in the State of New Mexico occupied by the Pueblo Indians of New Mexico, and

WHEREAS, The said Pueblo de Santa Ana, the party of the first part, is the owner of said lands located in the County of Sandoval, known as El Ranchito Grant, and

WHEREAS, The said Pueblo de Santa Ana, the party of the first part, is a corporation created under the laws of the State of New Mexico, and the persons executing this instrument constitute and are the governing body and governing officers of the party of the first part, with full power and authority to execute for and on behalf of the said party of the first part instruments conveying easements for rights of way across the lands owned and controlled by the said party of the first part, and

WHEREAS, It is the desire of the party of the first part to execute for itself and on behalf of the inhabitants thereof, an instrument granting to the party of the second part the right and privilege to construct, maintain, and operate a telegraph pole line, including necessary poles,



cables, conduits, wires, and fixtures, with the right to permit the attachment of the wires of any other party and right to trim trees along said line so as to keep the wires cleared at least fifty inches, and to set the necessary guy and brace poles and anchors, and to attach thereto the necessary guy wires over, along, and across those said lands situate within the boundaries of El Ranchito Grant above-mentioned, the exact location of which is hereinbefore specifically described and shown on the map attached hereto and made a part hereof.

NOW THEREFORE, In consideration of the premises and further consideration of \$70.00, and other good and valuable considerations in hand paid to the said party of the first party by the party of the second part, the receipt whereof is hereby acknowledged by the party of the first part, for itself and on behalf of the inhabitants of the Pueblo de Santa Ana, does hereby grant, bargain, sell, and convey unto the party of the second part, its successors and assigns, an easement to construct, maintain, and operate a telegraph pole line, including the necessary poles, cables, conduits, wires, and fixtures, with the right to permit the attachment of the wires of any other party and the right to trim any trees along said line so as to keep the wires cleared at least fifty inches, and to set the necessary guy and brace poles and anchors, and to attach thereto the necessary guy wires, over, along, and across the following described property, known as El Ranchito Land Grant, situate within the County of Sandoval and State of New Mexico, the exact location of said right of way being more particularly described as follows, to-wit:

Beginning at station 0 plus 00 of the line herein described, a point on the Southerly boundary of the

El Ranchito Grant S. 89 deg. 58'W. 689.36 feet from the 4 mile corner on said Grant line, and running thence N. 35 deg. 03'E., 4986.5 feet to station 49 plus 86.5; thence N. 33 deg. 10'E., 3291 feet to station 82 plus 77.5; thence N. 33 deg. 06'E., 1965.1 feet to station 102 plus 42.6; thence S. 35 deg. 28'E., 191.6 feet to station 104 plus 24.2; thence N. 33 deg. 23'E., 225.2 feet to station 106 plus 59.4, a point on the southerly boundary of the San Felipe Pueblo Grant, N. 86 deg. 58'E., [word illegible] feet from the 6 mile corner on said San Felipe Pueblo Grant line; thence continuing across the area in conflict between the El Ranchito Grant and the San Felipe Pueblo Grant N. 33 deg. 11'E., 281.6 feet to station 109 plus 41.0; thence N. [# illegible] deg. 12'E., 2184.2 feet to station 130 plus 95.2; thence N. 35 deg. 16'E., 218.3 feet to station 133 plus 13.5; thence N. [# illegible] deg. 22'E., 567.8 feet to station 136 plus 81.3; thence N. 44 deg. 19'E., 278.9 feet to station 139 plus [# illegible], a point on the northerly boundary of said El Ranchito Grant S. 74 deg. 16'E., 567.4 feet from [word illegible] Corner No. 5 on said Grant line.

It is hereby understood and agreed that only an easement for the construction and maintenance of telegraph line, and the fixtures thereto attached, is hereby granted, and that the party of the first part and the inhabitants of the said Pueblo de Santa Ana retain the right to cultivate said land or otherwise use it in any manner whatsoever, provided such cultivation and such use does not interfere with the operation of said pole line and fixtures thereon.

It is further understood that the party of the second part, its successors and assigns, shall have the right of ingress and egress to do any and all work necessary to properly maintain and operate said line or lines.

IN WITNESS WHEREOF, The said party of the first party has caused this instrument to be executed by its duly authorized officers for itself and on behalf of the



inhabitants of the said Pueblo de Santa Ana, and the said party of the second part has caused this instrument to be executed by its duly authorized officers the day and year first above written.

THE PUEBLO DE SANTA ANA

BY /s/ Emiliano Otero  
Governor

/s/ Jose Reye Leon

/s/ Estevan Lujan

/s/ Jose Cruz Montoya

/s/ Porfirio Montoya

/s/ Hilario Sanchez  
Party of the First Part,

POSTAL TELEGRAPH-CABLE  
COMPANY

BY /s/ Edward Reynolds  
Its President  
Party of the Second Part.

Attest:

[name illegible]  
Secretary

STATE OF NEW MEXICO )  
): ss  
COUNTY OF BERNALILLO )

On this 27th day of February, 1928, before me appeared *Emiliano Otero*, Governor of the Pueblo de Santa Ana, *Jose Reye Leon*, lieutenant governor of the Pueblo de Santa Ana, *Estevan Luijan*, *Jose Cruz Montoya*, *Porfirio Montoya*, and *Hilario Sanchez*, constituting the council and principal men of the Indian Pueblo de Santa Ana, to me personally known and before me duly sworn, did say

that they are the Governor, lieutenant governor, and the principal men of the Pueblo de Santa Ana, respectively, and that the said instrument was signed by them on behalf of the said Pueblo de Santa Ana and the inhabitants thereof, by authority of its board of principals made and provided, and the said *Emiliano Otero*, *Jose Reye Leon*, *Estevan Luijan*, *Hilario Sanchez*, *Jose Cruz Montoya*, and *Porfirio Montoya* acknowledged said instrument to be the free act and deed of said Pueblo de Santa Ana, and their free act and deed, and that the said Pueblo de Santa Ana has no corporate seal, and that said instrument was read and interpreted to each of them, and that each of them knows the contents thereof.

IN WITNESS WHEREOF, I hereunto set my hand and affix my official seal.

/s/ Frances L. Hussey  
Notary Public  
Bernalillo County

My commission expires: 11/25/31

STATE OF NEW YORK, )  
): ss.  
COUNTY OF NEW YORK. )

On the /s/ 14th day of /s/ March, 1928, before me personally appeared, /s/ *Edward Reynolds*, to me personally known, who being by me duly sworn, did say that he is the president of the Postal Telegraph-Cable Company, and that the seal affixed on said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of the said corporation by authority of its Board of Directors, and said /s/ *Edward Reynolds*, acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

/s/ John J. [name illegible]  
Notary Public  
State of New York County of New York  
Notary Public Queens County No. 651  
Queens County Recorder No. 2543  
Certificate filed in New York  
County No. 327  
New York County Register's No. 9281  
My Commission expires March 30, 1929

My commission expires /s/ March 30, 1929

[word illegible]

DEPARTMENT OF THE INTERIOR  
APR -4, 1928, 1928

Approved, pursuant to the provisions of Section 17, of the Act of June 7, 1924 (43 Stats. L., 636).

/s/ John H. Edwards  
Assistant Secretary  
Office of Ind. Affs.  
Land Div.  
Recorded in misc.  
Deed Book Vol. 24,  
page 68  
April 26, 1928

DEFENDANT'S EXHIBIT 6

SEP 15 1928

The Honorable

The Secretary of the Interior

(Through the Commissioner  
of the General Land Office)

Sir:

There are transmitted herewith agreement bearing approval of the special attorney for the Pueblo Indians entered into by and between the Board of County Commissioners of Sandoval County, New Mexico, and the Pueblo of Santa Ana whereby the Pueblo [word illegible] grants a right of way for public highway designated Federal Aid Project No. 88B, through its El Ranchito land grant in consideration of the advantages which the road will be to the Pueblo, and to its property, and payment of the sum of \$850 plus 3¢ per cubic yard for all gravel taken from such Pueblo lands.

The Superintendent of the Southern Pueblos Agency reports that the sum of \$850 has been deposited with him and recommends that the agreement be approved.

By letter of August [# illegible], 1926, the attention of the superintendent was called to the fact that the accompanying map of definite location [word illegible] that the proposed road in to cross the Pueblo of San Felipe, that for a distance of about one-half mile the road would cross to overlapping portions of the Pueblos mentioned; and that it was [word illegible] desirable to have an agreement with the San Felipe Pueblo for presentation to you at the same time as the agreement with the Santa Ana Pueblo. The superintendent now reports that the officials of the San Felipe Pueblo have refused to enter into any agreement concerning the opening of the road and that the highway authorities will be forced to resort to condemnation proceedings under the Act of May 10, [# illegible] (Public [word illegible]).

Under the circumstances it is thought that actions on the agreement with the Santa Ana Pueblo should not be further delayed, and provided the accompanying map of definite location is acceptable to the General Land Office, it is respectfully recommended that the agreement be approved under Section 17 of the Act of June 7, 1924 (43 Stat. L. 635-641) with the express reservations, however, of such rights as the Pueblo of San Felipe may have in and to the lands involved.

Respectfully,

9 PM 10

[name illegible]

OCT [# illegible], 1928 Assistant Commissioner

Approved:

[name illegible]

Assistant Secretary.

THIS AGREEMENT made and entered into this the 26th day of June A.D. 1926, [word illegible] between the Pueblo of Santa Ana, a Corporation, party of the first part, and the Board of County Commissioners of the County of Sandoval, and the State of New Mexico, party of the second part.

WITNESSETH: That whereas the party of the second part, by and with the corporation of the New Mexico State Highway Department and as a part of the work to be done under Federal Aid Project No. 88B proposes to construct and build a highway thru the said County of Sandoval, which said highway shall be a graded road constructed in accordance with the specifications and plans prepared in connection with the said Federal Aid Project No. 88B.

NOW, in consideration of the advantages which said road will be to the said party of the first part and to its prop-

erty, and in the further consideration of \$850.00 to be paid to the said party of the first part by the Board of County Commissioners of the County of Sandoval, State of New Mexico, within thirty days after the execution of this agreement by the party of the first part, and said party of the second part, the full and free right-of-way of the width of 80 feet, with necessary ground for cuts and fills for the highway referred to, also for the further consideration of three cents (0.03) per cubic yard for gravel. The basis of measurement and payment to be based on the Contractors Estimates, with the right of ingress and egress to and from such pits, upon and thru the lands of said Pueblo of Santa Ana described substantially as follows:

Being a line as surveyed and shown on the sketch map of Federal Aid Project 88B in Sandoval County, and also more particularly described as a right-of-way starting at a point approximately three and one tenth (3.1) miles North of the Town of Bernalillo, said point being Station 173+31.45 of Federal Aid Project 88B same being the South Boundry of the Santa Ana Pueblo.

Thence in a North Easternly direction thru Section 21, and Portions of Section 16, 15, and 10, to the North Boundry of the El Ranchito Land Grant, same being Station 313+54.35 of the Federal Aid Project No. 88B, same being considered North Boundry of the Santa Ana Pueblo.

IT BEING FURTHER UNDERSTOOD AND AGREED THAT the said party of the first part waives any claim for damages by reason of the construction of the highway in question and covenants and agrees that this easement or right-of-way shall be a permanent one so long as the said highway shall be maintained as a public road or highway, it being stipulated that in event said highway is ever abandoned as a public road or highway, this contract shall be forfeited and the easement herein granted waived and abandoned by the party of the second part of all the rights, privileges and interests herein granted.



IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seal the day and year in this agreement written above.

Elias Armijo  
Captain

ATTEST

Sam P. Fulton

ATTEST

Glenn A. Towers

/s/ Hilario Sanchez, Governor  
Santiago Tenorio,  
Lieut. Gov.  
Porfirio Montoya,  
Interpreter  
Board of County  
Commissioner  
Sandoval County  
  
By J. M. Sandoval  
Chairman  
  
Walter Cockran  
Special Attorney to Indians

Approved as to Form

STATE OF NEW MEXICO :  
COUNTY OF SANDOVAL : ss

This 26th day of June A.D. 1926., before me personally appeared *Hilario Sanchez, Santiago Tenorio, Elias Armijo, Porfirio Montoya, & Daniel Otero* to me personally known to the same persons described in and who executed the foregoing instrument as a Committee of the Pueblo of Santa Ana appointed for the purpose, who being by me duly sworn, on their respective oaths do severally say, each for himself and no one for the other.

that he, the said Hilario Sanchez, is Governor;  
that he, the said Santiago Tenorio, is Lieut. Governor

that he, the said Elias Armijo, is Captain of the  
Santa Ana Council

that he, the said Porfirio Montoya, is Interpreter  
Witness to mark.

that he, the said Daniel Otero, is representative  
of the Santa Ana Council, and that the said instrument was signed in behalf of the Pueblo of Santa Ana by them, by authority, of the said community and they acknowledged the said instrument to be the free act and deed of the said Pueblo of Santa Ana, and that they executed the same as their free act and deed and as the deed of such committee and officers.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Clarence Higgins  
My commission expires Dec. 16, 1928

Principals Representative  
Daniel Otero

I hereby certify that the above and foregoing is a true and correct copy of the original agreement as filed in this office.

[name illegible]  
Asst. District Engineer

ATTEST [name illegible]

Department of the Interior  
Washington, D.C. OCT 13 1926

APPROVED:

[name illegible]

Assistant Secretary

## DEFENDANT'S EXHIBIT 7

DEPARTMENT OF THE INTERIOR,  
NOVEMBER 3, 1928.

Approved, pursuant to the provisions of Section 17 of  
the Act of June 7, 1924 (43 Stat. L., 636):

/s/ John H. Edwards  
Assistant Secretary.

EASEMENT FOR ELECTRIC POWER LINE  
RIGHT-OF-WAY

This Indenture, made this 17th day of August, 1928, by and between the PUEBLO DE SANTA ANA, a corporation, existing under and by virtue of the laws of the State of New Mexico, party of the first part, and the NEW MEXICO POWER COMPANY, a corporation of the State of New Jersey duly authorized to do business in the State of New Mexico, party of the second part,

## WITNESSETH:

That WHEREAS, the New Mexico Power Company, a corporation, has made an application to the duly qualified and elected Governor of the Pueblo de Santa Ana, party of the first part, for a right-of-way in the nature of an easement for an electric transmission and power line crossing the lands of the party of the first part; and

WHEREAS, the Governor has regularly called a meeting of the Council and other residents and inhabitants of the said Pueblo for the purpose of considering said application; and

WHEREAS, after due consideration of the said application the Governor and Council were authorized and directed to enter into a contract with the said New Mexico Power Company, a corporation, the party of the second part herein, granting a right-of-way in the nature of an easement for said transmission and power line across the lands of said Pueblo;

NOW, THEREFORE, for and in consideration of the sum of \$70.00 and other valuable considerations in hand paid to the party of the first part by the party of the second part, the receipt of which is hereby acknowledged, said party of the first part hereby grants, bargains, sells, and conveys to the party of the second part, its successors and assigns, for the period of fifty (50) years, a right-of-way and easement twenty feet (20') in width, on each side of the center line of such line with the right, privilege and authority to the said party of the second part, its successors, assigns, lessees and tenants to construct, erect, operate and maintain a line, or lines, for the purpose of transmitting and distributing electric or other power in, on, along, over, through, across or under the following described lands situate in Sandoval County, State of New Mexico, to-wit:

Beginning at station 0 plus 00, as shown on the accompanying map designated as exhibit "A" in application to Secretary of the Interior, a point on the east boundary line of El Ranchito Grant, in Section 21, Township 13 North, Range 4 East, New Mexico Principal Meridian, from which beginning point the four mile corner on said Grant line bears S.89°58', W., 462.8 feet distant, and running thence from said point of beginning N.35°03' E., 10,805 feet to station 108 plus 05.0, a point on the old South boundary line of the San Felipe Pueblo Grant, whence the five and one-half mile corner on said last named Grant line

bears S.86°58'E., 1675 feet distant; thence continuing N.35°03'E., 2602.6 feet to station 134 plus 07.6; thence N.41°03'E., 500 feet to station 139 plus 07.6; thence N.50°45'E., 254.4 feet to station 141 plus 62.0, a point on the northerly boundary line of said El Ranchito Grant, whence the two mile corner on said last named Grant line bears S.89°25' W., 165.5 feet distant; the herein described line traversing portions of Sections 21, 22, 15, 10 and 11, of said Township 13 North, Range 4 East, and being 21, 22, 15, 10 and 11, of said Township 13 North, Range 4 East, and being 2.682 miles in length, all in Sandoval County, State of New Mexico.

The instrument used on this survey is a W. & L.E. Gurley Transit No. 221471, with 8½ inch telescope and 6-inch vernier plates graduated to 1 minute of arc. Courses were determined by solar observations. Distances were measured with a Chicago 100-foot steel tape, and plumb-bobs were used in leveling for measurement where necessary.

Meridian determined from the established meridian of the City of Albuquerque.

Together with the right to said party of the second part, its successors and assigns, to place, erect, maintain, inspect, add to the number of and relocate at will, poles, towers, cross-arms, or fixtures, and string wires and cables, adding thereto from time to time, across, through, or over, the above described premises; to cut and remove from said premises or the premises of the party of the first part adjoining the same on either side any trees, overhanging branches or other obstructions which may endanger the safety or interfere with the use of said poles and towers or fixtures or wires attached thereto, or any structures on said premises; and the right of ingress and egress to and over the above described premises and any of the adjoining lands of the party of the first part at any and all times for the purposes of patrolling the line or re-

pairing or renewing or adding to the number of said poles, towers, structures, fixtures and wires, and for doing anything necessary or useful or convenient for the enjoyment of the easement herein granted; also the privilege of removing at any time any or all of said improvements erected upon, over, under or on said lands.

Together with the rights, easements, privileges and appurtenances in or to said lands which may be required for the full enjoyment of the rights herein granted.

It is understood and agreed that this easement shall not interfere with the use and occupation by first party for grazing or other usual purposes of the land covered by said right-of-way so long as such use and occupation does not interfere with the free use and enjoyment of said easement by second party.

IN WITNESS WHEREOF, we have hereunto set our hands the day and year first above written.

WITNESSES:

/s/ (Illegible)

/s/ (Illegible)

PUEBLO DE SANTA ANA

By /s/ Emiliano Otero  
Governor

/s/ Jose Rye Leon  
Lieutenant Governor

/s/ (Name Illegible)

/s/ Lem A. Towers

/s/ (Name Illegible)

/s/ Lem A. Towers



/s/ Crusio Loretto  
His Mark (fingerprint)  
/s/ San Lorenzo Tenorio  
/s/ Daniel Otero  
/s/ Porfirio Montoya  
/s/ Estaven Huyia  
His Mark (fingerprint)

STATE OF NEW MEXICO  
COUNTY OF SANDOVAL ss.

On this 17th day of August, 1928, before me personally appeared Emiliano Otero, the Governor, and Jose Rey Leon, the Lieutenant Governor, and Crusio Loretto, San Lorenzo Tenorio, Daniel Otero, Porfirio Montoya, and Estaven Lujan, members of the Pueblo Council of the Pueblo de Santa Ana, a corporation, each to me personally known, who being by me duly sworn, did say that he is the officer designated as such in the foregoing instrument, and that said instrument was signed on behalf of said corporation by authority of a majority of the members attending a meeting called for the purpose of authorizing the execution of said instrument, and said Emiliano Otero, Governor, and Jose Rey Leon, Lieutenant Governor, and the members of said council whose names are affixed to the foregoing instrument, each for himself and not one for the other, acknowledged said instrument to be the free act and deed of said corporation; that the corporation does not have a corporate seal, and for that reason none is affixed hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the day and year last above written.

Jas. Russell Guild  
Notary Public

My commission expires April 7, 1930

CERTIFICATE OF APPROVAL

I, Lemuel A. Towers, Superintendent in Charge of the Southern Pueblos in the State of New Mexico, hereby certify that:

1. The Pueblo de Santa Ana is one of the Indian Pueblos under my jurisdiction.
2. That I was present at the signing of the foregoing grant of easement for a right-of-way for electric transmission and distribution lines to the New Mexico Power Company.
3. That the said grant of easement was made with my full knowledge and consent.
4. That I hereby recommend the approval of the application of the New Mexico Power Company by the Honorable Secretary of the Interior for this grant of easement.

Lemuel A. Towers  
Superintendent in Charge of  
Southern Pueblos.

DEFENDANT'S EXHIBIT 8

BUREAU OF INDIAN AFFAIRS

RECEIVED

JAN 27 1958

996

WASHINGTON, D.C.

### AGREEMENT

THIS AGREEMENT is made and entered into this 4 day of November, 1957, by and between the PUEBLO OF SANTA ANA, a community of Pueblo Indians residing in New Mexico, hereinafter called the Pueblo, and the UNITED STATES OF AMERICA through the Bureau of Reclamation, Department of the Interior, hereinafter called the United States.

#### *Recitals.*

A. The United States has made application for a right of way across tribal lands of the Pueblo of Santa Ana for construction of the Atrisco Feeder Canal North Reach extension, as indicated on attached drawing No. 163-518-3875, entitled "Atrisco Feeder Canal in the El Ranchito Grant", and construct a maintenance road along the Albuquerque Main Canal as indicated on attached drawing No. 163-518-3876 entitled "Albuquerque Main Canal in the El Ranchito Grant", said construction to be part of the irrigation rehabilitation which the Bureau of Reclamation is constructing.

B. At a meeting August 27, 1957, the Council of the Pueblo of Santa Ana consented to the grant of said right of way for the construction of the aforesaid rehabilitation across tribal lands of the Pueblo of Santa Ana.

C. The Council of the Pueblo of Santa Ana authorized the grant of said right of way across said lands subject to the payment of damages in the total amount of \$1,867.00.

NOW, THEREFORE, for and in consideration of the sum of \$1,867.00 for the right of way hereby granted across

tribal lands, including community and individually assigned lands, of the Pueblo of Santa Ana, which sum has been deposited by the Bureau of Reclamation with the United Pueblos Agency, Bureau of Indian Affairs, and which sum is determined and agreed is just compensation, it is agreed between the parties as follows:

1. The Pueblo hereby grants the United States and its assigns a right of way easement for the construction of the Atrisco Feeder Canal North Reach Extension and maintenance road along the Albuquerque Main Canal as shown on Drawing No. 163-518-3875 and Drawing No. 163-418-3876 for so long as said land shall be used by the United States or its assigns for construction of the aforesaid rehabilitation. When said land shall cease to be used for said purposes, the right of way easement hereby granted forthwith terminates. The members of the Pueblo of Santa Ana shall have the right to continue to use all gates and roads which are now or may in the future be in existence on the land covered by this grant of right of way. It is understood that the right to use the roads will not in any way interfere with the Bureau of Reclamation or its successors or assigns.

2. If, at any time, existing spoil banks along the Albuquerque Main Canal are drifting onto adjacent Indian lands, the United States, its successors and assigns, shall take appropriate measures to eliminate that condition. When danger of such a condition exists, the United States, its successors and assigns will not deposit additional excavated material upon said spoil banks. The determination of whether such material is drifting upon the Indian lands, or whether a danger thereof exists, shall

be made by the Secretary of the Interior, whose decision thereon shall be final.

3. Nothing in this grant of right of way shall in any way be construed to abrogate or impair existing obligations of the Middle Rio Grande Conservancy District, including obligations to furnish water for the use of the Pueblo of Santa Ana, its members and their lands whether based on treaty, agreement, Act of Congress or general law.

4. Nothing in this grant of right of way shall be construed to affect adversely the rights of the Pueblo of Santa Ana or its members or its or their lands under existing contracts between the United States and the Middle Rio Grande Conservancy District or any other such contracts or under existing laws of the United States relating to said rights.

5. The priority of right and the quantity of water to which the Pueblo of Santa Ana, its members and its and their land are entitled shall not be adversely affected and are saved to and protected for the Pueblo, its members and their lands.

6. The United States expressly agrees to all of the stipulations provided for in the rules and regulations of the Department of the Interior relating to rights of way, especially those set forth in 25 C.F.R. 256.7 (now 161.7).

7. This agreement shall not be effective until approved by the Secretary of the Interior, pursuant to Sec. 17 of the Act of June 7, 1924, 43 Stat. 636.

IN WITNESS WHEREOF we have hereunto set our hands the day and year first above written.

Approved as to form [*word illegible*], 1959

PUEBLO OF SANTA ANA

By Jose Bob Pino  
Governor

[*name illegible*]  
Field Solicitor

Recommended for approval:

BUREAU OF RECLAMATION

By [*name illegible*]

Title [*word illegible*] Manager

[*name illegible*]  
General Superintendent  
United Pueblos Agency  
Bureau of Indian Affairs

Approved: \_\_\_\_\_, 195\_\_\_\_\_

[*name illegible*]  
Secretary of the Interior

BUREAU OF INDIAN AFFAIRS  
RECEIVED JAN. 27 1958  
996  
WASHINGTON, D.C.

# RESOLUTION

At a duly called meeting of the Council of the PUEBLO OF SANTA ANA on the 27th day of August, 1957, the following resolution was adopted:

*Recitals.*



(a) The Bureau of Reclamation, Department of the Interior, is rehabilitating the works and structures of the Middle Rio Grande Conservancy District including the Atrisco Feeder Canal North Reach Extension in Sections 10, 15, 16, and 17, and the Albuquerque Main Canal in Sections 10, 15, and 16, all in Township 13 North, Range 4 East within Santa Ana Pueblo Grant.

(b) The Bureau of Reclamation has applied for additional right of way on Santa Ana Pueblo land for the Atrisco Feeder Canal North Reach Extension and the Albuquerque Main Canal at the locations and in the varying widths as shown on Maps No. 163-518-3875 and No. 163-518-3876 prepared by that Bureau and entitled "Atrisco Feeder Canal in the El Ranchito Grant" and "Albuquerque Main Canal in the El Ranchito Grant."

NOW, THEREFORE, BE IT RESOLVED that the Pueblo of Santa Ana hereby consents to the grant of right of way to the United States and its assigns at the location shown on above-mentioned maps No. 163-518-3875 and No. 163-518-3876 for the Atrisco Feeder Canal North Reach Extension and Albuquerque Main Canal for so long as said land shall be used by the United States or its assigns for irrigation and drainage purposes. When said land shall cease to be used for said purpose, the right of way easement hereby granted shall forthwith terminate.

BE IT FURTHER RESOLVED that said right of way is granted subject to the following terms and conditions:

(1) Payment of damages shall be made as follows:

ATRISCO FEEDER CANAL (North Reach Extension)		
	Acreage	Amount
Community Tribal Lands	25.12	Donation
Assignee	Additional Acreage	Amount
Longino Otero	0.22	\$ 44.00
Jose Bob Pino	0.27	54.00
Abel Lujan	0.29	58.00
Petronilo Montoya	0.09	18.00
Tom Cristobal (Benito Garcia)	0.48	96.00
(Cristo) Raton, sons, Enrique Albert	0.56	112.00
Abel Lujan	0.62	124.00
Emilio Raton	0.36	72.00
Santa Ana Community Lands	0.46	92.00
	3.35	670.00
Grand Total	28.47	\$ 670.00

ALBUQUERQUE MAIN CANAL		
Assignee	Acreage	Amount
Raymond Montoya	0.21	\$ 63.00
Jesus Manuel and Christo Garcia (Lt. Gov.)	0.35	105.00
Fabian Lopez	0.74	222.00
Fidel Lopez	0.24	72.00
Gabriel Montoya	0.56	168.00
Joe Garcia	0.25	75.00
Santiago Barela	0.22	66.00
Domingo Montoya	0.33	99.00
Joe Paguin	0.26	78.00
Jack Sanchez	0.17	51.00
/s/ JBP Jose Rey Leon	0.11	33.00
Miguel Armigo	0.18	54.00
San Lorenzo Tenorio	0.09	27.00
Porfirio Montoya	0.03	9.00

Santiago Tenorio	0.03	9.00
Lolito Pena Cristobal	0.22	66.00
Community Tribal Lands	0.00	00.00
	<u>3.99</u>	<u>\$1,197.00</u>

(2) The United States shall have the right to construct and maintain access roads along the full lengths of the right of way in order to facilitate operation and maintenance of the Atrisco Feeder Canal North Reach Extension and Albuquerque Main Canal, provided that the right is reserved in the Pueblo of Santa Ana to use the operation and maintenance road to be constructed along the east side of the Albuquerque Main Canal between the north boundary of the El Ranchito Grant and Station 115+00. It is understood that the right to use the road will not in any way interfere with the operations of the Bureau of Reclamation or its successors or assigns.

(3) Nothing in this grant of right of way shall in any way be construed to abrogate or impair existing obligations of the Middle Rio Grande Conservancy District or the Bureau of Reclamation, including obligations to furnish water for the use of the Pueblo of Santa Ana, its members and their lands whether based on treaty, agreement, Act of Congress or general law.

(4) Nothing in this grant of right of way shall be construed to affect adversely the rights of the Pueblo of Santa Ana or its members or its or their lands under existing contracts between the United States and the Middle Rio Grande Conservancy District or any other such contracts or under existing laws of the United States relating to said rights.

(5) The priority of right and the quantity of water to which the Pueblo of Santa Ana, its members and its and their land are entitled shall not be adversely affected and are saved to and protected for the Pueblo, its members and its and their lands.

(6) The United States expressly agrees to all of the stipulations provided for in the rules and regulations of the Department of the Interior relating to right of way, especially those set forth in 25 C.F.R. 256.7. (/s/ now 161.7)

(7) In view of the fact that regulations of the Department of the Interior governing right of way (25 C.F.R. 256.19—/s/ 161.10) provide that the Superintendent may approve a right of way for this purpose for not to extend 50 years, it is desired by the Pueblo of Santa Ana that the hereinabove mentioned right of way be approved, in perpetuity, by the Secretary of the Interior under provisions of the Pueblo Lands Act, approved June 7, 1924, 43 Stat. 636.

BE IT FURTHER RESOLVED that in connection with the approval of the grant of right of way by the Secretary of the Interior, authority be requested for him to authorize the General Superintendent of United Pueblos Agency to disburse direct to the Pueblo of Santa Ana funds deposited by the Bureau of Reclamation for said right of way and that said damages shall not be taken up in a Proceeds of Labor Account.

/s/ Jose Bob Pino  
Governor

/s/ Fidel Lopez  
Member of Council

/s/ Fabian Lopez  
Member of Council

## DEFENDANT'S EXHIBIT 9

## BUREAU OF INDIAN AFFAIRS

Received AUG - 6 1956

11092

Washington, D. C.

## A G R E E M E N T

THIS AGREEMENT is made and entered into this 15 day of June, 1956, by and between the PUEBLO OF SANTA ANA, a community of Pueblo Indians residing in New Mexico, hereinafter called the Pueblo, and the UNITED STATES OF AMERICA through the Bureau of Reclamation, Department of the Interior, hereinafter called the United States.

*Recitals*

A. The United States has made application for a right of way across tribal land of the Pueblo of Santa Ana for construction of the Atrisco feeder canal indicated on attached Drawing Number 163-518-2479, marked Exhibit "A", said feeder canal to be a part of the irrigation rehabilitation work which the Bureau of Reclamation is constructing.

B. At a meeting December 13, 1955, the Council of the Pueblo of Santa Ana consented to the grant of said right of way for the Atrisco feeder canal across tribal lands and across assigned land of one member of the Pueblo of Santa Ana.

C. The council of the Pueblo of Santa Ana authorized the grant of said right of way across tribal community land and assigned land in accordance with the following schedule of payment of damages:

1. To the Pueblo of Santa Ana for 3.97 acres of community land at the rate of \$50.00 per acre ..... \$198.50
2. To Valencia Garcia, a member of the Pueblo of Santa Ana, for 0.25 acres of tribal land duly assigned to his use, at rate of \$300.00 per acre ..... 75.00  
The east 0.17 acres of this tract is to be used for road right of way by members of the Pueblo of Santa Ana.

TOTAL ..... \$273.50

NOW, THEREFORE, for and in consideration of the sum of \$273.50 for the right of way hereby granted across 3.97 acres of tribal land and 0.25 acres of tribal land assigned to the use of one individual member of the Pueblo of Santa Ana, which sum has been deposited by the Bureau of Reclamation with the Albuquerque Office, Bureau of Indian Affairs, and which sum is determined and agreed is just compensation, it is agreed between the parties as follows:

1. The Pueblo hereby grants the United States and its assigns a right of way easement for the construction of the Atrisco feeder canal, the right of way 40 feet in width and 4,631.96 feet in length as shown on Drawing Number 163-518-2479, marked Exhibit "A" for so long as said land shall be used by the United States or its assigns for construction, operation and maintenance of the said Atrisco feeder canal. When said land shall cease to be used for said purposes, the right of way easement hereby granted shall forthwith terminate.

2. Nothing in this grant of right of way shall in any way be construed to abrogate or impair existing obligations



of the Middle Rio Grande Conservancy District, including obligations to furnish water for the use of the Pueblo of Santa Ana, its members and their lands whether based on treaty, agreement, Act of Congress or general law.

3. Nothing in this grant of right of way shall be construed to affect adversely the rights of the Pueblo of Santa Ana or its members or its or their lands under existing contracts between the United States and the Middle Rio Grande Conservancy District or any other such contracts or under existing laws of the United States relating to said rights.

4. The priority of right and the quantity of water to which the Pueblo of Santa Ana, its members and its and their land are entitled shall not be adversely affected and are saved to and protected for the Pueblo, its members and its and their lands.

5. The United States expressly agrees to all of the stipulations provided for in the rules and regulations of the Department of the Interior relating to rights of way, especially those set forth in 25 C.F.R. 256.7.

6. This agreement shall not be effective until approved by the Secretary of the Interior, pursuant to the Act of June 7, 1924, 43 Stat. 636.

IN WITNESS WHEREOF we have hereunto set our hands the day and year first above written.  
Approved as to form: 6-13, 1956

PUEBLO OF SANTA ANA

By /s/ Jose Bobe Pino  
Governor

/s/ William A. Brophy  
Field Solicitor  
Appd. Sol. Off.

Recommended for Approval:

BUREAU OF RECLAMATION

By /s/ John C. Thompson  
Title *Project Manager*

[*name illegible*]  
General Superintendent  
United Pueblos Agency  
Bureau of Indian Affairs

Approved: SEP 10 1956  
[*name illegible*]  
Assistant Secretary of the Interior

#### RESOLUTION

At a duly called meeting of the Council of the PUEBLO OF SANTA ANA on the 13th day of December, 1955, the following resolution was adopted:

##### *Recitals.*

(a) The Bureau of Reclamation, Department of the Interior is rehabilitating the works and structures of the Middle Rio Grande Conservancy District, including the Atrisco Feeder Canal with Sections 20 and 30 of Township 13 N., W. L. L., within Santa Ana Pueblo Grant.

(b) The Bureau of Reclamation has applied for additional rights of way on Santa Ana Pueblo land for the Atrisco Feeder Canal at the locations and in the varying widths as shown on Map No. 163-518-2479 prepared by that Bureau and entitled "Atrisco Feeder Canal, Irrigation Rehabilitation, Santa Ana Pueblo Grant Rights of Way."

NOW, THEREFORE, BE IT RESOLVED that the Pueblo of Santa Ana hereby consents to the grant of right

of way to the United States and its assigns at the locations shown on the above-mentioned map No. 163-518-2479 for the Atrisco Feeder Canal for so long as said land shall be used by the United States or its assigns for irrigation and drainage purposes. When said land shall cease to be used for said purpose, the right of way easement hereby granted shall forthwith terminate.

BE IT FURTHER RESOLVED that said right of way is granted subject to the following terms and conditions:

(1) Payment of damages shall be made as follows:

- (a) To the Pueblo of Santa Ana for 3.97 acres of community land at the rate of 50.00 per acres ..... 198.50
- (b) To Valencia Garcia, a member of the Pueblo of Santa Ana, for .25 acre of tribal land duly assigned to his use, at rate of 300.00 per acre ..... 75.00

Said payment to above-named member of the Pueblo of Santa Ana shall be made by separate check, in favor of said person, in the amount stipulated above opposite his name.

(2) The United States shall have the right to construct and maintain access roads along the full lengths of the right of way in order to facilitate operation and maintenance of the Atrisco Feeder Canal.

(3) Nothing in this grant of right of way shall in any way be construed to abrogate or impair existing obligations of the Middle Rio Grande Conservancy District or the Bureau of Reclamation, including obligations to furnish water for the use of the Pueblo of Santa Ana, its members and their lands whether based on treaty, agreement, Act of Congress or general law.

(4) Nothing in this grant of right of way shall be construed to affect adversely the rights of the Pueblo of Santa Ana or its members or its or their lands under existing contracts between the United States and the Middle Rio Grande Conservancy District or any other such contracts or under existing laws of the United States relating to said rights.

(5) The priority of right and the quantity of water to which the Pueblo of Santa Ana, its members and its and their land are entitled shall not be adversely affected and are saved to and protected for the Pueblo, its members and its and their lands.

(6) The United States expressly agrees to all of the stipulations provided for in the rules and regulations of the Department of the Interior relating to rights of way, especially those set forth in 25 C.F.R. 256.7.

(7) In view of the fact that regulations of the Department of the Interior governing rights of way (25 C.F.R. 256.19) provide that the superintendent may approve a right of way for this purpose for not to exceed fifty years, it is desired by the Pueblo of Santa Ana that the hereinabove mentioned right of way be approved, in perpetuity, by the Secretary of the Interior under provisions of the Pueblo Lands Act, approved June 7, 1924, 43 Stat. 636.

BE IT FURTHER RESOLVED that in connection with the approval of the grant of right of way by the Secretary of the Interior, authority be requested for him to authorize the General Superintendent of United Pueblo Agency to disburse direct to the Pueblo of Santa Ana and to the individual member named herein his respective

share of the damages deposited by the Bureau of Reclamation for said right of way and that said damages shall not be taken up in a Proceeds of Labor Account.

/s/ Fidelino Sanchez  
Governor

/s/ Joe Garcia  
Member of Council

(signed William A. Brophy 6/13/56

Appd. Sol. Off.

/s/ Porfirio Montoya  
Member of Council

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#### DEFENDANT'S EXHIBIT 10

(This was a copy of Right of Way Agreement between the Pueblo of Santa Ana and Mountain Bell, dated February 23, 1928. This material can be found at J.A. 38-43.)

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#### DEFENDANT'S EXHIBIT 11

#### DEPARTMENT OF THE INTERIOR UNITED STATES INDIAN FIELD SERVICE

Southern Pueblos Agency, Box 563,  
Albuquerque, New Mexico.  
March 29, 1928.

April 6, 1928  
17497

The Commissioner of Indian Affairs,  
Washington, D. C.

Sir:

I am submitting herewith five copies of a right-of-way agreement made between the Mountain States Telephone & Telegraph Company and the Santa Ana pueblo for a right-of-way across the El Ranchito Grant. The tracings will be sent under separate cover.

I was present at a meeting between the Indians and the representative of the Telephone Company wherein an agreement was reached to pay to the pueblo \$101.60 for this right-of-way. We believe this to be a fair price and it is a little higher than the price paid by this company to some of the other pueblos, but this was done for the reason that the Indians disputed the south boundary of their Grant as defined by the Pueblo Lands Board and rather than discuss this matter the company paid what the Indians asked as a total, which was the equivalent of 80¢ a pole for 127 poles. We, therefore, recommend that this agreement be approved, and upon its approval we request authority to pay this money to the Governor of the pueblo.

Respectfully yours,

/s/ Lem A. Towers  
Superintendent.

LAT:AD

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#### DEFENDANT'S EXHIBIT 12

153722  
5-1100

Address Only the  
Commissioner of Indian Affairs

Refer in Reply to the  
Following

L-C  
17497-28



UNITED STATES  
DEPARTMENT OF THE INTERIOR

Office of Indian Affairs  
Washington

The Honorable

The Secretary of the Interior.

Sir:

There is transmitted herewith letter dated March 29, 1928, from the Superintendent of the Southern Pueblos Agency, transmitting five parts of agreement dated February 23, 1928, between the pueblo of Santa Ana and the Mountain States Telephone & Telegraph Company whereby the pueblo-named grants a right-of-way for telephone and telegraph line across the El Ranchito Grant for consideration of \$101.60.

The Superintendent reports that this amount, which is at the rate of 80¢ a pole for 127 poles, has been deposited with him and is regarded as being a fair price. He recommends that the agreement be approved and authority granted for him to turn the consideration over to the Governor of the Santa Ana pueblo for the benefit of the Indians thereof.

In view of the facts presented it is recommended that the agreement herewith be approved pursuant to the provisions of Section 17 of the Act of June 7, 1924 (43 Stat. L. 636); and that authority be granted for the Superintendent of the Southern Pueblos Agency to turn over the consideration amounting to \$101.60 to the Governor of the Santa Ana pueblo for the benefit of the Indians thereof.

Respectfully,

/s/ E. B. Merritt  
Assistant Commissioner.

Approved: APR 13 1928

/s/ John H. Edwards  
Assistant Secretary.

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DEFENDANT'S EXHIBIT 13

Re-Right of way - El Ranchito Grant, Pueblo de Santa Ana,  
New Mexico

THE MOUNTAIN STATES TELEPHONE AND  
TELEGRAPH COMPANY

Arizona Colorado Idaho Montana New Mexico  
Utah Wyoming El Paso, Texas  
800 Fourteenth Street

F. A. Cannon,

Superintendent of Rights of Way

Denver, Colo. March 27, 1928.

Mr. Lem. A. Towers, Superintendent Southern Pueblos,  
United States Indian Field Service,  
Albuquerque, New Mexico.

Dear Sir:

Enclosed find formal application of The Mountain States Telephone and Telegraph Company for right of way for its telephone and telegraph line across the El Ranchito Grant, Pueblo de Santa Ana, New Mexico.

In addition to the formal application, the required affidavits, and certificates, the field notes in duplicate, five copies of agreement dated February 23, 1928, between the

Pueblo de Santa Ana and this Company, together with two photostatic copies of the voucher, and official receipt § 586687 covering the amount \$101.60 paid to the Pueblo, are also inclosed. The tracing, in duplicate, showing the location of the line is being sent by express together with one blue print which may be retained in your file.

We would thank you to advise if anything has been omitted or if any error is found in this application in order that we may take corrections.

Will you kindly advise when this application is approved?

Yours truly,

/s/ F. A. CANNON

Superintendent of Rights of Way.

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TO THE SECRETARY OF THE INTERIOR,

Washington, D. C.

Dear Sir:

Application for the Approval of  
Grant of a Right of Way for a  
Telephone and Telegraph Line  
Across El Ranchito Grant, a  
Part of the Pueblo de Santa Ana,  
New Mexico.

The Mountain States Telephone and Telegraph Company, a corporation duly organized and existing under the laws of the State of Colorado, and duly authorized to transact business in the State of New Mexico, hereby makes application for the approval of the Honorable Secretary of

the Interior of a deed or grant executed on behalf of the Pueblo de Santa Ana, by its duly authorized officers, for a right of way in the nature of an easement for the construction, operation and maintenance of a telephone and telegraph line across El Ranchito Grant, a part of the Pueblo de Santa Ana, the title to which is vested in the Pueblo de Santa Ana. The location of the line is as follows:

Beginning at a point on the south boundary of El Ranchito Grant, Section Twenty-one (21), Township Thirteen (13) North, Range Four (4) East, from which point the three and one-half mile corner bears north 89° 58' east 1389.5 feet; thence in a general northeasterly direction across El Ranchito Grant to the north boundary of said grant, from which point the northeast corner of El Ranchito Grant bears south 89° 00' east 2773.1 feet, a total distance of 2.988 miles.

Said right of way is more particularly described in the map and field notes hereto attached.

This application is made pursuant to the provisions of the Act of June 7, 1924.

The following documents are attached hereto, and made a part of this application:

Exhibit A — Map showing the line of route of the said right of way, inscribed upon which is an affidavit of Mr. F. A. Cannon, Superintendent of Rights of Way, to the effect that the survey of said right of way was made under his direction, and is accurately represented on said map; that there is also inscribed upon said map a statement by the company's Vice President and attested by the Secretary under the company's seal, showing the authority of the said Superintendent of Rights of Way to

make the survey, and certifying also to the accuracy of said map, and the purposes thereof.

Exhibit B—Copy of the field notes and survey upon which the said map is based.

Exhibit D—Form of agreement executed by the proper officials of the Pueblo de Santa Ana and The Mountain States Telephone and Telegraph Company, on the 23rd day of February, 1928.

Exhibit E—Affidavit of applicant's Vice President, under the seal of the company, showing the names and designations of its officers at this date.

Exhibit F—Certified copy of a Resolution of the Board of Directors authorizing the Vice President of said company to execute, on behalf of the said company, exhibits of the kind herein referred to.

Exhibit G—Certificate by the Vice President of said company to the effect that the organization of said company has been completed, and that the said company is fully authorized to proceed with the construction and maintenance of the said telephone and telegraph line above referred to, and that a copy of the articles of incorporation of said company has heretofore been filed with the Department of the Interior, and that no changes have been made therein since said filing.

The Mountain States Telephone and Telegraph Company further states that copies of its articles of incorporation have heretofore been forwarded to your department, as have also certificates of the Corporation Commission of the State of New Mexico, showing that the appli-

cant has complied with all the laws of that state relating to or governing foreign corporations.

The Mountain States Telephone and Telegraph Company further states that it intends in good faith to construct, maintain and operate a telephone and telegraph line along the right of way, approval of which is herein applied for, and respectfully requests that the said right of way or easement be approved in accordance with the Act above referred to.

Dated at Denver, Colorado, this 23rd day of March, 1928.

THE MOUNTAIN STATES TELEPHONE  
AND TELEGRAPH COMPANY,

By H. E. McAfee  
Its Vice President.

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DEFENDANT'S EXHIBITS 14-19 omitted in printing.

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UNITED STATES DEPARTMENT  
OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

Southern Pueblos Agency

P.O. Box 1667

1000 Indian School Road, N.W.  
Albuquerque, New Mexico 87103

Received By Nov. 4, 1981

Mountain Bell Law Department

In Reply Refer To:  
Real Property Management

October 30, 1981



Mr. Stuart S. Gunckel  
 Mountain States Telephone & Telegraph Company  
 931 - 14th Street, Suite 1300  
 Denver, Colorado 80202

*Pueblo of Santa Ana v.  
 Mountain States Telephone  
 and Telegraph Company,  
 CIV No. 80 841 M*

Dear Mr. Gunckel:

On July 15, 1981 you took a deposition from Mrs. Louisa B. Sando, Realty Specialist at Southern Pueblos Agency, concerning Real Property Management file information relating to approval of rights-of-way under section 17 of the Pueblo Lands Act of June 7, 1924 (43 Stat. L. 636). On rechecking the files Mrs. Sando has found some corrections are necessary to that deposition.

The earliest approval under section 17 of the Act of June 7, 1924 was given as October 1924. A review of the files indicates two approvals listed as October 1924 were under the Act of March 3, 1911 (36 Stat. 1253). These two rights-of-way were *reapproved in July 1928* under the Act of June 7, 1924.

The file records indicate the earliest approval of a right-of-way under section 17 of the Act of June 7, 1924 was made April 28, 1926 for railroad right-of-way.

One right-of-way to the AT&SF Railway Company for a coaling station was included in the count of rights-of-way approved under the Act of June 7, 1924. We find now this was approved in 1923 under a different act.

In addition to a power line right-of-way to Albuquerque Gas and Electric Company for a 44 KV line across Sandia Pueblo land approved April 5, 1926, we find there were two subsequent line changes on that right-of-way approved under the Act of June 7, 1924. Approval dates were February 7, 1931 and September 29, 1933.

Sincerely,

/s/ Omar Bradley  
 Agency Realty Officer

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